

5 APRIL 1948

I N D E X

	<u>Page</u>
Summation by the Defense (cont'd) by Mr. Logan	46577
<u>MORNING RECESS</u>	46632
Summation by the Defense (cont'd) by Mr. Logan	46633
<u>NOON RECESS</u>	46673
Summation by the Defense (cont'd) by Mr. Logan	46674
<u>AFTERNOON RECESS</u>	46732
Summation by the Defense (cont'd) by Mr. Logan	46733

Monday, 5 April 1948

1
2
3 INTERNATIONAL MILITARY TRIBUNAL
4 FOR THE FAR EAST
5 Court House of the Tribunal
6 War Ministry Building
7 Tokyo, Japan

8 The Tribunal met, pursuant to adjournment,
9 at 0930.

10 Appearances:

11 For the Tribunal, all Members sitting.

12 For the Prosecution Section, same as before.

13 For the Defense Section, same as before.

14 - - -
15 (English to Japanese and Japanese
16 to English interpretation was made by the
17 Language Section, IMTFE.)
18
19
20
21
22
23
24
25

W
h
e
l
e
n
&
M
o
r
s
e

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except UMEZU, MATSUI and SHIRATORI who are represented
5 by counsel. The Sugamo Prison surgeon certified that
6 they are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Mr. Logan.

9 MR. LOGAN: If the Tribunal please, I shall
10 continue reading KIDO's summation, page 130, paragraph
11 154.

12 XII. (b) June 1, 1940 - September 12, 1940.

13 154. With respect to KIDO's activities from
14 June 1, 1940 to September 9, 1940 the prosecution
15 makes a few broad general remarks. ⁴⁸⁹ We point out
16 that KIDO had no duty to make protests to the Cabinet
17 Ministers, that he did confer with the Emperor and
18 that KIDO did not accept various views without objec-
19 tion as contended by the prosecution. It was during
20 this period of time that KIDO received information
21 from the Foreign Minister of what transpired at the
22 Four Ministers' Conference regarding French Indo-China
23 as shown in his diary of June 19, 1940. ⁴⁹⁰ He received
24 information from Foreign Minister ARITA about a
25

(489. Par. JJ-53, T. 41,094-41,095

490. Ex. 619, T. 6824)

conversation he had with Ambassador Grew concerning
 1 a treaty between the United States and Japan, as
 2 shown in his diary of June 27, 1940.⁴⁹¹ The prosecu-
 3 tion retreats from its contention⁴⁹² that these
 4 exhibits showed KIDO's attitude towards the United
 5 States, Great Britain, and the Netherlands, after KIDO
 6 had pointed out in his affidavit the prosecution's
 7 erroneous conclusions,⁴⁹³ and now only claims that it
 8 shows he had knowledge. On July 1, 1940 as shown in
 9 his diary⁴⁹⁴ Foreign Minister ARITA told him about
 10 various matters including the situation in Hongkong,
 11 the negotiations between Japan and America, and requests
 12 from Germany of withdrawal of representatives from
 13 certain countries, the Netherlands East Indies economic
 14 problems, and the probability of sending an economic
 15 mission to French Indo-China and the Netherlands East
 16 Indies. As is shown in the same diary entry KIDO did
 17 report these matters to the Emperor. The prosecution
 18 ignores KIDO's diary entry of July 5, 1940⁴⁹⁵ and his
 19 affidavit reciting the plot to kill Premier YONAI,
 20 Mr. MACHIDA, Count MAKINO, Baron HARADA, Baron ICHIKI,
 21

- 22 (491. Ex. 1294 as Cor. by Lang. Sec.
 23 T. 38,680
 24 492. Doc. 0003, Tr. 16,851
 25 493. Aff. par. 138-139, Tr. 30,897-30,898
 494. Ex. 1295, T. 11,710
 495. Ex. 532, T. 6,241)

1 Mr. KIDEA, Admiral OKADA, Mr. YUASA, and Household
2 Minister MATSUDIARA, who were all close personal
3 friends of KIDO, and KIDO was also on the list. ⁴⁹⁶

4 His diary for that date shows that he reported this
5 to the Emperor.

6 155. His diary of July 7, 1940 ⁴⁹⁷ shows that
7 there were rumors of a political change and Baron
8 HIRANUMA favored the appointment of Prince KONOYE.

9 His entry of July 8, 1940 ⁴⁹⁸ reveals that the Army
10 supported Prince KONOYE. As this entry shows, KIDO
11 received this report from Vice War Minister ANAMI
12 but did not express his opinion. Prince KONOYE was
13 the overwhelmingly popular choice as Premier, also
14 having the backing of the political moves which were
15 steadily being taken to counter the Army's advance
16 in the political field. ⁴⁹⁹

17 If KONOYE had not been
18 recommended the result would have been to hand over
19 political power entirely to the Army at that time.

20 KIDO's Diary also shows that he discussed these matters
21 with the Emperor on that date. The diary of July 14
22 1940 ⁵⁰⁰ also shows that he discussed with the Emperor
23 the question of heavy artillery mobilization in South

24 (496. Aff. par. 141, Tr. 30,899

25 497. Ex. 532, Tr. 6,242

498. Ex. 532, Tr. 6,242-6,244

499. Ex. 143, Tr. 30,900-30,901

500. Ex. 534, Tr. 6,259)

China. This diary entry also reveals that when requested to obtain information, in accordance with his duty, KIDO avoided conferring directly with the military authorities and had the chief aide de camp to the Emperor make an investigation. It shows that it was not part of KIDO's duties to contact the military authorities with respect to operations.⁵⁰¹

156. The YONAI Cabinet fell after War Minister HATA's resignation and the Army refused to suggest a successor as related in KIDO's Diary of July 16, 1940.⁵⁰² All the evidence shows KIDO had no part in the reasons for the fall of this Cabinet.⁵⁰³ KIDO conferred with the Emperor and the Emperor requested him to ask the President of the Privy Council and the former Premier about the selection of the head of an incoming cabinet, and to report their answers after consultation with the Senior Statesmen, which he did. KIDO was requested to arrange the council of those people in the palace and that he himself should participate in it. Attention is directed to the fact that the method of proceeding was ordered by the Emperor.

(501. Aff. par. 144, Tr. 30,901
502. Pros. Ex. 532, Tr. 6244-6248
503. Tr. 28,918-28,944-29,945,
Tr. 36,580)

504

157. His diary of July 17, 1940 sets forth the conference of the Senior Statesmen. WAKATSUKI, former head of the Minseito Party, was the first to recommend KONOYE. WAKATSUKI, a prosecution witness, has never been represented as a militarist. KONOYE was the popular choice of all those present and he was the popular choice of the political parties, as well as the Army. When KIDO reported the recommendation of the Senior Statesmen to the throne, the Emperor asked KIDO if he could give KONOYE some advice -- that is, that KONOYE should be prudent in the choice of the Foreign and Finance Ministers, as the situation at home and abroad was very grave. KIDO told him it would be a good idea to do so, all of which appears in the diary of July 17, 1940. KIDO's Diary of July 18, 1940⁵⁰⁵ reveals that KIDO deplored the fact that the former War Minister had recommended TOJO while KONOYE was in the midst of forming a cabinet and KIDO recorded his wish that this " * * * instance might not set a precedent."

158. On August 9, 1940 KIDO had an audience with the Emperor⁵⁰⁶ wherein the Emperor expressed a regret that the new Foreign Minister MATSUOKA " * * failed

(504. Ex. 532, Tr. 6249-6256
505. Ex. 539, Tr. 6266-6267
506. Diary, Par. 148, Tr. 30,905)

to have any clear perspective of America's future
 1 policy." On September 9, 1940 KIDO received a report
 2 that the military agreement parley for a peaceful
 3 advance into Indo-China had, "*** taken a turn for the
 4 worse since the advance of one battalion or so of our
 5 troops into French Indo-China." ⁵⁰⁷ While it is true
 6 that this entry of the diary does not show KIDO's
 7 indignation at the actions of the military authorities,
 8 he was indignant at the operations of the military as
 9 appears in his diary entry of September 26, 1940, ⁵⁰⁸
 10 when after hearing that an Army unit had landed at
 11 Indo-China to bomb Haifong he stated in his diary, "It
 12 is indeed regrettable that such measures are taken by
 13 those in the field who do not understand the general
 14 situation. It is people like this who make the grave
 15 blunders."
 16

17 159. In September 1940 MATSUOKA's suggestion
 18 that an ultimatum be sent to French Indo-China was
 19 pending. The Emperor advised KIDO, as is shown in
 20 his diary of September 14, 1940 ⁵⁰⁹ that the views of
 21 MATSUOKA and of the Army General Staff did not co-
 22 incide exactly and that there would be no other way
 23

(507. Ex. 626, Tr. 6971

24 508. Ex. 643, Tr. 7049 as Cor. by Lang. Sec. on
 Mar. 18, 1948.

25 509. Ex. 627 as Cor. by Lang. Sec. Tr. 7029,
 Tr. 7103, Tr. 36,680)

except to let the government carry out its policy under the present circumstances. KIDO agreed with this as is shown in the diary, and KIDO recognized that the situation was very grave. The Emperor did not show hearty approval. KIDO added that he should direct the government to take a cautious attitude. In rendering his assistance, KIDO, as is shown in the diary, pointed out that it was being said that if matters continued without doing anything, the mischief making of England and the United States would become more serious and an opportunity might be given to them to cooperate with French Indo-China, and China. Contrary to the prosecution's contention KIDO was not expressing his opinion on this question; he was merely reporting what others were saying.

XII. (c) The Tripartite Pact.

160. The undisputed evidence is that KIDO first learned of MATSUOKA's secret conduct of negotiations for the conclusion of an alliance between Japan and Germany on September 12, 1940. Even the divisional chiefs of the Foreign Office were unaware of this secret.⁵¹⁰ The Prosecution makes the usual guess that KIDO knew of what was secretly going on at MATSUOKA's house prior to that date. Contrary to the prosecution's (510. Aff. par. 152, Tr. 30,907)

1 contention KIDO's Diary of September 14, 1940 does not
2 say, with its inference of prior knowledge by KIDO,
3 that TOJO informed KIDO later that evening that the
4 Navy's objection had been withdrawn. The entry
5 specifically shows that TOJO told KIDO that the
6 "****Army and Navy had arrived at an agreement concern-
7 ing relations with Germany and Italy."⁵¹¹

8 161. There is absolutely no evidence in
9 this case that the Emperor ever disapproved of the
10 government's decision after the government had made
11 it and when it was submitted to the throne as a national
12 policy. Prior to making a decision the Emperor may
13 express his views or caution the cabinet or request
14 the cabinet to reconsider its proposed attitude there-
15 upon. The prosecution approaches this proposition as
16 if KIDO had greater power than the Emperor. It tries
17 to create the impression that KIDO was making the
18 decisions. This is, of course, entirely unsupported
19 by the facts. KIDO merely submitted his views to the
20 Emperor and the final decisions were reached by the
21 government and the High Command.

22 162. KIDO discussed the matter of this
23 alliance with Prince KONOYE and Foreign Minister
24 (511. Ex. 627, Tr. 7029 as Cor. by Lang. Sec.
25 Tr. 7103 and Tr. 36,680)

MATSUOKA. KONOYI and MATSUOKA argued that the alliance
 1 was intended to prevent America from joining in the
 2 war and further that in case Japan was isolated in the
 3 Pacific without concluding such an alliance, Japan
 4 might be attacked by America at any moment. That was
 5 their standing explanation and KIDO thought that the
 6 alliance might cause an antithesis with America and
 7 eventually Japan would have to oppose Great Britain
 8 and the United States.⁵¹²

163. As shown in his diary of September
 10 16, 1940⁵¹³ he conferred with the Emperor about the
 11 alliance with Germany. On this occasion KIDO testified
 12 that he had advised the Emperor that this alliance,
 13 if concluded, would divide the world into two parts,
 14 irrespective of the opinions of the Prime Minister and
 15 MATSUOKA to the contrary.⁵¹⁴

164. The prosecution's reasoning with respect
 17 to KIDO's actions at the time the Tripartite Pact was
 18 consummated is difficult to follow. It says that no
 19 entry in HARADA Memoirs is in conflict with any entry
 20 in KIDO's Diary.⁵¹⁵ Yet it creates an extreme divergence⁵¹⁶
 21 of views between HARADA's Memoirs of October 20, 1940,

(512. Aff. par. 153, Tr. 30,909

513. Ibid.

514. Ibid.

515. Par. JJ-11, Tr. 41,056

516. Ex. 3810, Tr. 37,380)

1 alliance with Germany and Italy. We should,
2 therefore, make necessary adjustments regard-
3 ing our relations with China as soon as
4 possible."

5 Clearly this shows that KIDO told the Emperor that
6 if a military alliance with Germany and Italy was
7 concluded, it would bring on war with both England
8 and the United States. No amount of twisting of
9 language can interpret that as a persuasion of the
10 Emperor to accept the Pact.

11 165. It is quite clear that by making
12 "****necessary adjustments****" ⁵²² regarding the China
13 Incident KIDO was talking about making concessions.
14 What else could it have meant? The prosecution asks
15 the Tribunal to reject KIDO's statement in his affidavit
16 that this meant making concessions, but it does not
17 suggest what those words "necessary adjustments"
18 ⁵²³ mean.
19
20
21
22
23
24

25 (522. Aff. par. 154, Tr. 30,910
523. Par. JJ-54, Tr. 41,095)

166. In this Memoir of October 20, 1940,
HARADA also expressed doubts how the then Lord Keeper
of the Privy Seal and the Prime Minister explained the
1 matter to the Throne. Prince SAIONJI was also doubtful.
2 The very wording of this is based on an assumption that
3 KIDO and KONOYE obtained Imperial sanction. In so far
4 as KIDO is concerned, the evidence is to the contrary
5 as shown in KIDO's Diary of September 21, 1940.⁵²⁴ In so
6 far as Prince SAIONJI having been kept in ignorance,
7 it must be remembered that KIDO, too, was kept in ig-
8 norance by the Foreign Minister until September 12,
9 1940. Furthermore, when cross-examined KIDO fully
10 explained both from the legal and individual standpoint
11 that the duty rested on the Prime Minister to inform
12 Prince SAIONJI, and KIDO understood that the government
13 had discussed the matter with Prince SAIONJI.⁵²⁵ This
14 evidence is uncontradicted.
15

16 167. It is interesting to note that the prose-
17 cution itself does not know what HARADA is talking
18 about when it questions his memoir of October 20, 1940,
19 where he reports that the Emperor was told by both
20 KONOYE and KIDO that the adoption of the Tripartite
21 Pact was the only way to keep the United States of Amer-
22 ica out of war. The prosecution wants to know what war
23

24 524. Ex. 2277, T. 16,250

25 525. T. 31,572

526
HARADA is talking about. We have no idea.

1 168. The European War and the China Incident
2 were in progress at that time, but the prosecution
3 rejects both of these and claims the HARADA entry re-
4 fers to "proceedings" not "war" intended to take place
5 in the Far East. The purpose of this guess apparently
6 is to tie KIDO into it by referring to a prior diary
7 entry of September 14, 1940.⁵²⁷ This entry was twice
8 corrected by the Language Section, and reveals that
9 KIDO cautioned the Emperor to direct the government to
10 be careful before taking any action. The entry clearly
11 shows that he first told the Emperor of what had been
12 said about the opportunity of Great Britain and the
13 United States to cooperate with French Indo-China and
14 China. Nowhere does it show KIDO's approval as the
15 prosecution claims. This diary entry does not mention
16 military action against British, Dutch and Portuguese
17 possessions in the Far East which the prosecution says
18 the diary entry shows KIDO approved.⁵²⁸ After the gov-
19 ernment had made its decision with regard to the Tri-
20 partite Pact and KIDO had discussed the matter with the
21

23 526. Par. JJ-17, T. 41,060

24 527. Par. JJ-17, T. 41,061

25 528. Par. JJ-17; Diary, Ex. 527, T. 7,029, as cor.
by Language Section, T. 7,103 and T. 38,680;
T. 41,061

Emperor, the arranging of the Imperial Conference⁵²⁹
 1 for its approval was merely a matter of procedure. No
 2 responsibility can attach to KIDO for the Pact. He
 3 never advocated nor voted for it.

4 169. In discussing KIDO and the Tripartite
 5 Pact, the prosecution says, "It appears that he attended
 6 the Privy Council meeting which finally approved the
 7 Pact," citing its own exhibit 643, last paragraph, T.
 8 7,049 (not read).⁵³⁰ We respectfully suggest that the
 9 prosecution's interpretation cannot be characterized
 10 as fair nor is it compatible with its knowledge of the
 11 facts.
 12

13 170. The authority cited by the prosecution⁵³¹
 14 is KIDO's Diary for September 26, 1940. It says:

15 "I was informed that the Privy Council
 16 Committee which started sitting this morning
 17 finished finally at 7:30 p.m. after which at
 18 9:30 the full council was convened. On leaving
 19 this I went to the Palace. When I heard that the
 20 council had finished uneventfully at 10:20 I left
 21 the Palace."
 22

23 171. This entry clearly shows KIDO heard
 24 that the council sat until 7:30 p.m., reconvened at 9:30

25 529. Aff. par. 153, T. 30,909; Ex. 643, T. 7,049
 530. Ex. 643, T. 7,049 as cor. by Lang. Sec. on March
 18, 1948
 531. Ibid.

and finished at 10:20. Even if we were to accept the word "leaving" as correct, there could be no such interpretation as claimed by the prosecution. A casual reader would easily discern the typographical error. The word "leaving" should be "learning." The Language Section has recently corrected it.⁵³² KIDO is on trial for his life.

172. Throughout this trial, many of KIDO's Diary entries were not submitted to the Language Section even though they had minor inaccuracies, because we felt they were not of sufficient importance. In several instances, however, the prosecution has endeavored to make capital of these, which we considered insignificant errors in its own exhibits of the diary. They were all duly changed by the Language Section. Since the prosecution, however, is now relying on typographical errors to convict KIDO, if there be any doubt whatsoever in the Tribunal's mind as to the translation of KIDO's Diary with respect to any particular entries already discussed, or which may be referred to in any rebuttal summation after the delivery of this summation, we suggest and have no objection to the Tribunal having the entry resubmitted to the Language Section.

532. Ibid.

XII. (d) October 1, 1940--September 1, 1941

1 173. After the conclusion of the Tripartite
2 Pact Foreign Minister MATSUOKA determined to take up
3 negotiations with Chungking in his own hands. At first
4 they appeared to make fair progress but later they
5 reached a dormant political stage. Consequently at a
6 Liaison Conference between the government and the High
7 Command on November 28, 1940 it was decided that a
8 basic treaty be concluded by Ambassador ABE with Wang
9 Ching-wei, paying no attention to the negotiations with
10 Chungking.⁵³⁴ The result was that the China Affair en-
11 tered a definite state of protraction.
12

13 174. Japanese power was becoming exhausted and
14 only pessimism existed as to the prospect for the set-
15 tlement of the China Affair, as related in KIDO's Diary
16 on November 29, 1940.⁵³⁵ KIDO had a conversation with
17 the Emperor wherein the Emperor recommended that there
18 was no alternative but to consider Japan's moves towards
19 Chungking with regard to the settlement of the incident
20 as a failure. In such an event the Emperor was con-
21 cerned as to what Japan's national policy would be as
22 the incident would naturally drag on in the event of
23 the final conclusion of a treaty of peace with the Wang
24

25 533. Aff. para. 159, T. 30,912

534. Ibid.

535. Pros. Ex. 2278 and errata, T. 16,251

1 Regime. KIDO told the Emperor that under the circum-
 2 stances, as they then existed, the Emperor was correct
 3 in saying that the incident would be a prolonged one
 4 and that it would be difficult for Japan to defeat
 5 Chungking in view of the exhausted state of Japan's
 6 power at that time. As KIDO pointed out there was noth-
 7 ing else to do but to complete Japan's national strength,
 8 securing keypoints and that Japan would be unable to
 9 settle the affair by compromising with positive action
 10 proponents in Japan. Certainly this was not an opinion
 11 in favor of invasion or aggression. It viewed the situa-
 12 tion as it existed at that time. In short, Japan was
 13 unable to make peace and KIDO was advocating mainte-
 14 nance of the status quo, and waiting for a future chance
 15 to settle the affair. Any criticism of KIDO's opinion
 16 is wholly unwarranted.⁵³⁶ Any other deductions as to the
 17 meaning of these diary entries are unsupported by any
 18 evidence in the case.

19
 20 175. In his affidavit KIDO sets forth a con-
 21 versation he had with the Emperor as revealed by his
 22 diary entry of December 3, 1940.⁵³⁷ The Emperor was con-
 23 cerned about Japanese-Soviet relations. As shown in
 24 the diary KIDO pointed out that the U.S.S.R. was in the
 25 most favorable position in the world at that time, and

536. Par. JJ-56, T. 41,098

537. Aff. Par. 161, T. 30,914-15

1 it was possible that she would not readily concede to
2 negotiate with Japan. KIDO pointed out to the Emperor
3 that,

4 "After the present war there is little
5 doubt that the only uninjured countries will
6 be the U.S.S.R. and the United States, while
7 others would be exhausted. Then, Japan will be
8 placed between the two powers and subjected to
9 extremely enduring hardship."

10 He also told the Emperor,

11 ". . . provided that we are prepared
12 for ten years of hardship and cultivate morale
13 based on simplicity and virility, I believe it
14 is not so difficult to emerge favorably in the
15 end."

16 These are, indeed, strange words for a man accused as
17 KIDO is of being an aggressor at heart. Can anyone
18 seriously contend in the face of this that KIDO was
19 conspiring as charged in the Indictment to dominate
20 the world by the use of aggression. It is equally
21 strange that the prosecution did not cross-examine
22 KIDO on this, nor does it mention it in its summation.
23 Apparently no twisting of these words could fit in with
24 the prosecution's theory of KIDO's case.
25

538

176. In his testimony, which was unchallenged

1 and uncontradicted, KIDO pointed out that in January
 2 1941 the Germans were adding to their military achieve-
 3 ments which had far-reaching effects on various quarters
 4 of Asia, particularly on French Indo-China whose mother-
 5 land had collapsed, and also on Thailand which had
 6 heretofore been under British influence. He pointed
 7 out that in Japan discussions were had as to the pro-
 8 priety or otherwise of Japan marching to the South
 9 and taking advantage of the great upheaval.⁵³⁹ Various
 10 plans were formulated by the Army for that purpose.⁵⁴⁰
 11 Japan mediated in a border dispute.⁵⁴¹

13 177. An outline of operations on French
 14 Indo-China and Thailand was adopted for the purpose
 15 of establishing leadership positions in the South and
 16 having access to raw materials on the one hand, and on
 17 the other hand bringing pressure to bear upon China
 18 from the South, so as to settle that affair.⁵⁴² It was
 19 natural that Japan could not look on the worldwide up-
 20 heaval with folded arms, there being no objection to
 21 having access to oil, rubber and iron resources on the
 22 part of Japan who was lacking in them, but moves for

24 538. Aff. par. 162, T. 30,915, 30,916, 30,917

25 539. Aff. par. 162, T. 30,915

540. Ibid.

541. Ibid.

542. Ibid.

those purposes must be taken through peaceful channels
and resort to armed force and impatience should be
1 strictly guarded against.⁵⁴³ KIDO directed the attention
2 of Prince KONOYE to that point and the Emperor was solie-
3 itous about it. The diary entry of January 24, 1941⁵⁴⁴
4 confirms KIDO's statement that when the Chiefs of Staff
5 of the Army and Navy reported to the Emperor on the
6 military agreement with Thailand the Emperor expressed
7 his fear that it might stimulate Great Britain and
8 the United States.
9

10
11
12
13
14
15
16
17
18
19
20
21
22

543. Aff. par. 162, T. 30,916
544. Aff. par. 162, T. 30,917

24
25

D
u
d
a
&
S
p
r
a
t
t

178. The prosecution claims^{545.} that KIDO's Diary of January 24, 1941 set forth in his affidavit^{546.} does not support his assertion set forth in the same paragraph of his affidavit. As related above KIDO recited the conditions as they existed at that time and does not claim that his diary entry of January 24, 1941 supports the assertions he made in his affidavit. They are related, however, as the diary shows the Emperor's actions based on conditions then existing.

179. The Chiefs of Staff and the Premier reported to the Emperor on measures to be taken toward French Indo-China and Thailand. These are recorded in KIDO's Diary of February 1, 1941,⁵⁴⁷ and his diaries of February 3, 1941.^{548.} The prosecution claims that neither the paragraph 163 of his affidavit which sets forth his diary of February 3, 1941 nor in his diary of February 1, 1941, does KIDO oppose the intended action regarding Camranh Bay and air bases near Saigon. On the contrary in the diary of February 3, 1941 KIDO stated that he was overawed at His Majesty's concern over those reports

545. Par. JJ-58, T. 41099.

546. Aff. par. 162, T. 30917.

547. Pros. Exh. 1303, T. 11743.

548. Aff. par. 163, T. 30918-30919.

1 of the Chiefs of the General Staff and in his affi-
2 davit he stated, "I regret that the Emperor's advice
3 was not embodied in the measures taken by the govern-
4 ment." The Emperor had given half-hearted approval
5 to this policy. The policy already had been made by
6 Chiefs of the General Staff and Premier, which is the
7 final and definite decision in the Japanese governmental
8 system.

9 180. In April, 1941 Foreign Minister MAT-
10 SUOKA on his way home from visiting Germany and Italy
11 concluded a neutrality pact with Premier Stalin at
12 Moscow.^{549.} On April 18, 1941 a telegram was received
13 from Ambassador NOMURA asking for instructions on a
14 draft plan of an understanding between the United States
15 and Japan which had been evolved as a result of nego-
16 tiations with Secretary of State Cordell Hull and
17 President Roosevelt. MATSUOKA was on his way to Tokyo,
18 and KONOYE, being delighted with the proposed negotia-
19 tions with the United States, requested MATSUOKA to
20 hurry home.^{550.} The China Affair at that time was
21 stalemated and as KIDO stated Japan's policy regarding
22 the Co-Prosperity Sphere in East Asia should be properly
23

24 549. Aff. par. 166, T. 30922.

25 550. Ibid.

conveyed to the United States so as to avoid mis-
understanding. 551.

181. The issue of the southern colonies
such as Malaya, Java, Sumatra, and French Indo-China,
and its effect upon Japan's existence were regarded as
a matter of grave national concern. The positivists
were advocating that Japan should immediately secure
those areas in the South even by force. KIDO and
KONOYE had discussed the matter and KIDO had also
discussed it with the Emperor, as shown in his diary
of April 19, 1941. 552. The prosecution's observation 553
that negotiations with the United States were kept
within such narrow limits that it is difficult to see
how anyone on the Japanese side could have had any
belief in their success from the beginning is apparently
made in total disregard of all the evidence produced in
this trial on those negotiations.

182. On April 3, 1941, KIDO was consulted
by KONOYE about the appointment of SUZUKI as President
of the Planning Board and concurrent Minister of State. 554.

551. Aff. par. 163, T. 30918.
552. Ex. 1065, T. 9875 as Cor. by Lang. Sec. T.10664.
553. Par. JJ-60, T. 41100.
554. Ex. 1058, T. 9850.

1 This was in accordance with KIDO's duties to pass on
 2 the character and rectitude of high officials such as
 3 Cabinet Ministers, who were appointed by the Emperor
 4 upon the recommendation of the Premier, so that there
 5 would be no subsequent reflection on the Emperor.^{554a.}
 6 The prosecution's implication is not warranted.^{555.}

7 183. On April 28, 1941 the Premier, the
 8 Foreign Minister and the Lord Keeper were ill simul-
 9 taneously. KIDO's Chief Secretary, MATSUDAIRA, came
 10 to see KIDO, stating that the Emperor wanted to know
 11 to what official His Majesty should turn for advice
 12 on diplomatic questions in such a situation, and the
 13 Emperor also requested information about the progress
 14 of the deliberations on the United States of America
 15 negotiations. The above is set forth in KIDO's Diary
 16 of April 28, 1941.^{556.} As is also shown in the diary,
 17 KIDO said he expressed his opinions about these ques-
 18 tions and asked Chief Secretary MATSUDAIRA to submit
 19 them to the throne. KIDO set forth in his affidavit
 20 what those opinions were. He said⁵⁵⁷ he told MATSU-
 21 DAIRA that the Lord Keeper of the Privy Seal had no
 22
 23 554a. Aff. par. 165, T. 30921.
 24 555. Par. G-64, T. 39594.
 25 556. Ex. 1066, T. 9876.
 557. Aff. par. 168, T. 30925.

1 authority concerning diplomatic matters but to convey
2 Imperial questions to the Premier and the Foreign
3 Minister, nor had he any authority to answer about
4 a diplomatic problem on his own responsibility. He
5 also stated that his Chief Secretary should advise the
6 Emperor that in the event of such simultaneous illnesses
7 the Imperial inquiry should be conveyed by the Grand
8 Chamberlain to the Premier or to the Foreign Minister.
9 With respect to the negotiations toward America, KIDO
10 submitted to the Emperor, through his Chief Secretary,
11 his views on the basis of what he had heard from
12 Prime Minister KONOYE and others about the developments
13 of the situation which were to the effect that KONOYE
14 was anxious to push the negotiations though there was
15 some difficulty so far as Foreign Minister MATSUOKA was
16 concerned. The prosecution does not dispute the truth
17 of the facts contained in KIDO's advice to the Emperor.
18 It does, however, roundly criticise KIDO^{558.} for not
19 calling Chief Secretary MATSUDAIRA to the stand to
20 corroborate KIDO's assertion that "the Lord Keeper had
21 no authority concerning diplomatic matters but to convey
22 Imperial questions to the Premier and Foreign Minister,
23 nor to answer about a diplomatic problem on his own
24 responsibility" and comments on the fact that
25 558. Par. JJ-61, T. 41101.

MATSUDAIRA's affidavit was one of these which was
1 served and withdrawn. It does not suggest that
2 MATSUDAIRA should have been called to testify to the
3 truth or falsity of whether or not KIDO told him that.
4 It wanted to cross-examine him on whether the fact
5 stated regarding KIDO's authority was correct. As
6 can be seen, the question involved the constitutional
7 interpretation of the Lord Keeper's duties. Two wit-
8 nesses were called on behalf of KIDO with respect to
9 this matter. The affidavit of Count MAKINO, former
10 Lord Keeper of the Privy Seal, covering this precise
11 question on the constitutional duties of the Lord
12 Keeper of the Privy Seal, was offered in evidence.
13 In objecting to it, the prosecution stated, "The affi-
14 davit consists of a dissertation by him on the legal
15 and constitutional position of the Lord Keeper of the
16 Privy Seal." 559. Objection to the entire affidavit
17 was sustained. 560. If KIDO had misstated his authority,
18 the prosecution could certainly have offered no objec-
19 tion to the affidavit and cross-examined MAKINO about
20 this matter. The second witness called on this point
21 was SAKUDA, Kotaro. Objections were made to his
22 affidavit by the prosecution, particularly to paragraph
23
24
25 559. T. 31616.
560. T. 31623.

1 4, when the prosecution said: "Paragraph 4, until you
2 get to the last four lines on page 6, is a dissertation
3 of the witness's opinion about the working of the
4 Constitution, particularly with regard to advice given
5 by the Minister of State to the Emperor and by the
6 Lord Keeper to the Emperor and the method of choosing
7 a new Premier, as to which again the Tribunal has all
8 the facts and is in a much better position to form an
9 opinion than the witness." Strenuous argument was

10 made by counsel ⁵⁶¹ in an endeavor to have this portion
11 of the affidavit admitted. SAKUDA, of unquestionable
12 qualifications from his long association with the
13 Japanese Government, ⁵⁶² was not offering an opinion
14 but was stating the facts and explaining the duties
15 of the Lord Keeper of the Privy Seal. Here again
16 the objection to this paragraph was sustained. ⁵⁶³ Here

17 again, if the prosecution had any reason to disbelieve
18 KIDO's statement, why didn't it permit SAKUDA's testi-
19 mony to go in evidence and then cross-examine SAKUDA?
20 The prosecution, however, states that the Tribunal had
21 expressly ruled that evidence of precisely this type
22 would be admitted if available, citing the President's

23
24 561. T. 31628.
25 562. T. 31622.
563. T. 31631.

1 observation made on SAKADA's affidavit. The prosecu-
 2 tion is in error. The Tribunal was referring to
 3 statements of witnesses corroborating what the accused
 4 said, and had nothing to do with the question of inter-
 5 pretation of the authority of the Lord Keeper of the
 6 Privy Seal.

7 184. In the general Pacific phase the
 8 prosecution states ⁵⁶⁴ that there was a disruption
 9 among the conspirators and as a result KONOYE, HIRA-
 10 NUMA and KIDO held MATSUOKA in check and claims that
 11 KIDO and the other two were promoters of the southward
 12 advance policy, and refers to the entry of KIDO's
 13 Diary of June 21, 1941, ⁵⁶⁵ and June 22, 1941 ⁵⁶⁶
 14 KIDO's Diary does not support such a conclusion.
 15 Foreign Minister MATSUOKA, who was the "problem"
 16 Minister of the KONOYE Cabinet, had changed his atti-
 17 tude considerably upon his return from his trip to
 18 Europe, and ignored Premier KONOYE. ⁵⁶⁷ Premier
 19 KONOYE was greatly concerned over this attitude on
 20 the part of the Foreign Minister and also told KIDO
 21 about his painful position as is recorded in KIDO's
 22 564. Par. G-80, T. 39616-39,617; Par. G-81, T. 39618.
 23 565. Ex. 781, T. 7910.
 24 566. Ex. 1093 as Cor. by Lang. Sec. T. 10664.
 25 567. Aff. par. 148, T. 30904; Aff. par. 169-179,
 T. 30925-30936.

Diary of June 20, 1941,⁵⁶⁸ June 21, 1941,⁵⁶⁹ July 2,⁵⁷⁰ and July 15, 1941.⁵⁷¹

In view of the eminence of the German-Soviet War, Prince KONOYE called on KIDO on June 20, 1941 and told him about MATSUOKA's attitude which he could not understand and referring to the resignation of the HIRANUMA Cabinet as a similar instance, stated that he wished to resign if a war should break out between Germany and the Soviet. At that time KONOYE was enthusiastic in making special efforts to conclude Japan's diplomatic negotiations with the United States, and KIDO did not believe that he should resign and told him that prior to his resignation he should talk frankly to MATSUOKA and try to persuade MATSUOKA into acceptance of KONOYE's administrative policy.⁵⁷² A resignation at this time might have forced the incoming Cabinet into still greater pressure by the militarists. KIDO also suggested that KONOYE should talk over the matter with HIRANUMA, Minister of Home Affairs, as shown in his diary of June 20, 1941.⁵⁷³

185. As a result a conference was held on

⁵⁶⁸ Ex. 1090, T. 10000 as Cor. by Lang. Sec., T. 10664.

⁵⁶⁹ Ex. 781, T. 7910.

⁵⁷⁰ Ex. 1108, T. 10144.

⁵⁷¹ Ex. 1115, T. 10162 as Cor. by Lang. Sec. T. 10666.

⁵⁷² Aff. par. 171, T. 30927.

⁵⁷³ Ex. 1090, T. 10000, as cor. by Lang. Sec., T. 10664.

1 the next day which KONOYE, KIDO and HIRANUMA attended.
2 The reason why HIRANUMA was present was because of
3 KONOYE's reference to the reasons for the resignation
4 of the HIRANUMA Cabinet as a similar instance and
5 wanted to hear from him how the situation stood at
6 that time. As shown in KIDO's diary for June 21,
7 1941,⁵⁷⁴ the discussion was based on KIDO's opinion⁵⁷⁵
8 to KONOYE of the previous day. KIDO pointed out
9 that the circumstances were entirely different from
10 those which led to the resignation of the HIRANUMA
11 Cabinet in that in the event of a German-Soviet war
12 it would rather be necessary to give reconsideration
13 to the Tripartite Alliance and that for that purpose
14 it would be inevitable that the Foreign Minister
15 MATSUOKA leave the Cabinet, as it would not be advisable
16 for the cabinet to resign en bloc. As further shown
17 in the diary entry KIDO stated that KONOYE should
18 assume leadership.
19

20 186. Just as had been feared, the German-
21 Soviet war broke out on the 22nd. The conduct of
22 foreign affairs in the midst of such a complicated
23 situation was a delicate and difficult question for
24 Japan.⁵⁷⁶ As was to be expected, MATSUOKA began to
25

574. Ex. 781, T. 7910.

575. Ex. 781, T. 7910.

576. Aff. Par. 173, T. 30929.

1 advocate, over Prince KONOYE's head, a military
2 expedition to Siberia which met with disapproval by
3 the Cabinet Ministers as well as KONOYE. It is
4 because of this consideration that KIDO told the
5 Emperor, as is recorded in his diary of June 22,
6 1941,⁵⁷⁷ that His Majesty should impress upon
7 MATSUOKA his desire to have the matters handled
8 through the Premier and also impress upon MATSUOKA
9 the importance of careful consultation with the
10 Premier. A careful reading of KIDO's Diary will
11 definitely establish that KIDO, in his statement to
12 the Emperor, said nothing which might produce an
13 effect on the Emperor's views concerning the govern-
14 ment's policy. That would have been interference by
15 KIDO with the cabinet. He merely expressed his wish
16 that as Emperor he would show an attitude of attach-
17 ing due importance to the Premier and checking the
18 too forward act which might be harmful to the unity
19 of the cabinet. This is an outstanding instance of the
20 scrupulous care with which KIDO, as Lord Keeper of
21 the Privy Seal, exercised in strictly observing the
22 distinction between the Imperial Court and the Govern-
23 ment so as not to encroach upon the proper functions of
24
25 577. Ex.-1093; T. 10664.

the government. As KIDO has explained,^{578.} in case
the explanation of the government or the Supreme
Command regarding any policy was deemed considerably
well grounded, the Lord Keeper used to tell the
Emperor to approve it. In such a case, however, the
Lord Keeper was always strictly cautious if he was
asked and gave his own personal opinion.

^{578.} Aff. par. 151, T. 30906.

137. The next day, June 23, 1941, as shown
 579
 1 in KIDO's Diary KIDO had an audience with the Emperor
 2 in the morning. He reported to him the conversation
 3 of Prince KONOYE with MATSUOKA. In that entry of his
 4 diary KIDO mentions the fact that he had a talk with
 5 Prince KONOYE from 2:40 p.m. to 4:00 p.m., "* * * ex-
 6 changing frank opinions on the changed situation
 7 caused by Germany's war against Soviet Russia." The
 8 prosecution complains because KIDO did not set out in
 9 his diary this conversation and intimates that there
 10 was no trace of it. As shown the entry does show he
 11 had such a conversation. However, the prosecution did
 12 not cross-examine KIDO on this conversation. It is
 13 uncontradicted. As KIDO testified on direct KONOYE
 14 asked KIDO his opinion.
 15 580 KIDO stated that Germany by
 16 waging a war against the Soviet Union had violated the
 17 principle that it was necessary for both states to
 18 make strides in adjusting diplomatic relations with
 19 the Soviet Union. On this principle Germany agreed
 20 at the time when the alliance between Germany and Japan
 21 was concluded. In other words, Germany's waging a
 22 war against Russia had changed one of the elements upon
 23 which the alliance was formed. Therefore, the Prime
 24

579. Tr. 10,024.

580. Aff. par. 175, Tr. 30,931.

1 Minister should consider most carefully as to
 2 whether the alliance should be continued any longer.
 3 Prince KONOYE agreed with KIDO on that point and
 4 agreed that he would examine the matter. KIDO sub-
 5 sequently heard that KONOYE had expressed to MATSUOKA
 6 his desire for reconsideration of the alliance, but
 7 MATSUOKA did not take it seriously and only made
 8 a protest by telegram to the German Foreign Minister. 581
 9 There is no foundation for the prosecution's claim
 10 that this advice conflicts with his diary entry of
 11 June 21, 1941, 582 or with the advice he gave the
 12 Emperor on July 31, 1941. 583.

13
 14 188. The prosecution points to diary entries 584
 15 of June 18, 1941, 585 June 25, 1941, and July 5, 1941 586 587
 16 in support of its contention that they show no record
 17 of KIDO's disapproval or of advice to the Emperor
 18 to stop the advance into southern French Indo-China.
 19 The prosecution must know, although it did not include
 20 it in its excerpt of June 18, 1941, that KIDO did
 21 speak to the Emperor on that day. The prosecution

- 22 581. Aff. par. 175, Tr. 30,931.
 23 582. Pros. ex. 781, Tr. 7910.
 24 583. Tr. 30,933.
 25 584. Par. JJ-63, Tr. 41,102.
 585. Ex. 1089, Tr. 9998.
 586. Ex. 1095, Tr. 10,026.
 587. Ex. 1112, Tr. 10,156 as Cor. by Lang. Sec.
 Tr. 10,666.

1 also overlooks the fact that KIDO's diary shows that
 2 he did discuss this matter with the Emperor on
 3 June 22, 1941,⁵⁸⁸ June 23, 1941,⁵⁸⁹ and July 2, 1941.⁵⁹⁰

4 189. There is no necessity for amazement
 5 on the part of the prosecution that KIDO did not know
 6 until he read KONOYE's memoirs that the decision of
 7 the Imperial Conference of July 2, 1941 "* * * con-
 8 templated an advance to French Indo-China and was to
 9 be carried on even if it meant recourse to war
 10 against the United States of America and Britain."

11 As explained by KIDO,⁵⁹¹ he was advised that the dis-
 12 cussions at the liaison conference had centered pri-
 13 marily around MATSUOKA's idea of proceeding north
 14 against Russia. Of secondary importance was the pub-
 15 lic discussion of the necessity of Japan advancing
 16 southward to obtain materials and necessities. As
 17 shown in his diary of July 2, 1941,⁵⁹² it was the
 18 Emperor who told KIDO about the progress of the
 19 Imperial conference. The prosecution, however,
 20 argues that he knew the details of the September 6,
 21 1941, conference as appears from prosecution

22 588. Ex. 1093, Tr. 10,021 as Cor. by Lang. Sec.
 23 Tr. 10,664.

24 589. Ex. 1094, Tr. 10,024.

25 590. Ex. 1108, Tr. 10,144.

591. Aff. par. 177, Tr. 30,933.

592. Ex. 1108, Tr. 10,144.

1 exhibit 2250, tr. 16,198, which is a historical docu-
 2 ment KIDO wrote in November 1941. Naturally in order
 3 to record the events properly, and as the decision
 4 of the September 6 Conference was most important,
 5 because it was the "cancer" existing at that time, he
 6 ascertained the exact facts in detail. Here again
 7 KIDO was not cross-examined on any of these matters.
 8 The prosecution submits its own conclusions unsup-
 9 ported by facts.

10 190. It is significant that the prosecution,
 11 in its individual summation against KIDO, omits all
 12 reference to KIDO's affidavit and diary entries with
 13 respect to KIDO's opinion that MATSUOKA should resign
 14 because he was proving a stumbling block in KONOYE's
 15 attempts to complete peace negotiations with America,
 16 as set forth in KIDO's diary of July 15, 1941,
 17 July 16, 1941,⁵⁹⁴ and July 17, 1941.⁵⁹⁵ MATSUOKA's
 18 attitude is confirmed in Prince KONOYE's memoirs,⁵⁹⁶
 19 wherein KONOYE records, "However, in spite of my
 20 efforts, Foreign Minister MATSUOKA's attitude became
 21 increasingly uncooperative. It became clear that
 22 his attitude was one of opposition to the Japanese-

24 593. Ex. 1115, as Cor. by Lang. Sec. Tr. 10,666.
 25 594. Ex. 1116, as Cor. by Lang. Sec. Tr. 10,667.
 595. Ex. 1117, as Cor. by Lang. Sec. Tr. 11,138;
 Aff. paras. 179, 180, 181, 182, Tr. 30,934-
 30,939.
 596. Ex. 2866, Tr. 25,747.

American negotiations." KONOYE also records, with
 1 respect to the collapse of his cabinet at that time,
 2 "The previous cabinet had done its utmost for the
 3 success of the Japanese-American negotiations. * * *
 4 The opposition of the Foreign Minister alone had
 5 caused the cabinet's collapse."⁵⁹⁷ This is also con-
 6 firmed by TOMITA's testimony and the prosecution did
 7 not cross-examine him.⁵⁹⁸

9 191. The KONOYE cabinet resigned and the
 10 only principal change of the new KONOYE cabinet was
 11 that Foreign Minister MATSUOKA was replaced by Foreign
 12 Minister TOYODA which was for the purpose of facili-
 13 tating negotiations with America.⁵⁹⁹ Ambassador Craigie
 14 reported on the change in policy after MATSUOKA's
 15 departure as Foreign Minister as follows:⁶⁰⁰

17 "With his departure, a very considerable --
 18 brief notable (?but) a radical -- change has occurred
 19 in the political situation here, and there exists a
 20 more real prospect than at that time of setting in
 21 motion a steady swing away from the Axis and towards
 22 more moderate policies."

23 Apparently by failing to mention in its

24 597. Ex. 2866, Tr. 25,748.

25 598. Tr. 33,298.

599. Par. 182, Tr. 30,939.

600. Ex. 2908, Tr. 25,849.

individual summation KIDO's participation in the exodus
of MATSUOKA, the prosecution realized KIDO was exerting
efforts for peaceful purposes and that they did not
represent the acts of a criminal.

92. The prosecution reverses its position
and asks the Tribunal to accept what KIDO wrote in his
affidavit⁶⁰¹ regarding a conversation KIDO had with
Prince KONOYE on August 2, 1941,⁶⁰² explaining his diary
entry of that date.⁶⁰³ The prosecution seems to think
that KIDO should be convicted because he does not
state in every excerpt of his diary that he was
objecting to war with the United States. KIDO was a
historian recording the facts as they occurred. As
his diary of August 2, 1941, clearly shows, in a
conversation he had with KONOYE the question on hand
was that there was a certain element in the navy which
was gathering strength which might lead to political
difficulties and cause anxiety in the maintenance of
harmony between the Supreme Command and the government.
They also discussed the fact that because of the
embargoes Japan's oil would not last two years, which
would result in an acute national crisis and that a

601. Par. JJ-64, Tr. 41,103-41,104.

602. Aff. par. 185, Tr. 30,943-30,944.

603. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.
Tr. 10,667.

1 thorough discussion should be had between the War and
 2 Navy Ministers concerning the fundamental national
 3 policy and if a complete agreement was not reached,
 4 the cabinet would have to resign and the army and
 5 navy would then assume charge of the administration
 6 of the country. From this it is quite apparent, as
 7 explained by KIDO, that there was some talk of going
 8 to war with America at that time, and it is clear
 9 that the use of the word "now" as referred to by
 10 KIDO in his explanation was merely in reference to
 11 the fact that there was an element in the navy which
 12 was considering a decision to go to war with America
 13 at that time. If this diary of August 2, 1941, ⁶⁰⁴ is
 14 read in conjunction with KIDO's diary of August 7,
 15 ⁶⁰⁵ 1941, KIDO's opinion on this entire matter will be
 16 clearly discerned. As he stated in his diary of
 17 August 7, 1941, if the situation with respect to the
 18 oil were true, "We must reach the conclusion that
 19 our war with the United States of America would be
 20 a hopeless one." Does that sound like the opinion
 21 of a man conspiring to wage aggressive war? Emphati-
 22 cally no. It definitely establishes that KIDO was

23 604. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.
 24 Tr. 10,667.

25 605. Ex. 1130, Tr. 10,199 as Cor. by Lang. Sec.
 Tr. 10,667.

1 suggesting to KONOYE he should avert war with America
2 by diplomatic negotiations on the ground that if
3 Japan was to go to war with America the blockade of
4 oil would be fatal to Japan.

5 193. He then points out that if an attack
6 was made on the Dutch East Indies and Singapore and
7 the Philippine Islands, they would still not be able
8 to get oil and Japan would be defeated. In paragraph
9 11 KIDO said;

10 "11. We could not do what we wanted on
11 account of the lack of our national power. Although
12 the situation was different in its external appearance,
13 we might be compelled to make the same decision as we
14 did in the case of the Three-Power Interference after
15 the Sino-Japanese War." 606

16 The prosecution, without any evidence to
17 support it, interprets this clause as meaning that
18 what Japan actually did was to submit for the time
19 being and wait for better opportunities to enforce her
20 will upon China which came in 1915, 1931, and 1937.
21 This, of course, is not the decision KIDO refers to.
22 May we take the liberty and advise the Tribunal that
23 KIDO was referring to the decision which was made
24 after the peace conference when Japan as a result of
25 606. Ex. 1130, Tr. 10,200, as Cor. by Lang. Sec.
10,667.

1 the Three-Power interference returned the Liaotung
2 Peninsula to China. (If the prosecution thought this
3 was important, it could have asked KIDO.) The balance
4 of the entry shows that KIDO advocated that the
5 Japanese should do everything in their power to restore
6 friendly relations between the United States of
7 America and Japan which, as is well known, were very
8 critical at that time.

9 194. The evidence is that KIDO knew that
10 Japan was being pressed economically but he felt and
11 told KONOYE that Japan should resolve to toil through
12 ten years of hard struggle.⁶⁰⁷ He pointed out the need
13 for materials and Japan's hopes in the southern
14 regions. The evidence is that he had no thought in
15 mind of obtaining those materials other than by
16 peaceful means.⁶⁰⁸ KIDO testified that he fully
17 realized in his talk with KONOYE that if Japan suc-
18 ceeded in warding off a war with America and the
19 present European war came to an end, the desire for
20 peace would not be impossible to be created after the
21 war and that, therefore, it might be possible to get
22 politics to follow their proper course until that
23
24 607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.
25 608. Aff. par. 187, Tr. 30,946-30,947.

1 the Three-Power interference returned the Liaotung
2 Peninsula to China. (If the prosecution thought this
3 was important, it could have asked KIDO.) The balance
4 of the entry shows that KIDO advocated that the
5 Japanese should do everything in their power to restore
6 friendly relations between the United States of
7 America and Japan which, as is well known, were very
8 critical at that time.

9 194. The evidence is that KIDO knew that
10 Japan was being pressed economically but he felt and
11 told KONOYE that Japan should resolve to toil through
12 ten years of hard struggle.⁶⁰⁷ He pointed out the need
13 for materials and Japan's hopes in the southern
14 regions. The evidence is that he had no thought in
15 mind of obtaining those materials other than by
16 peaceful means.⁶⁰⁸ KIDO testified that he fully
17 realized in his talk with KONOYE that if Japan suc-
18 ceeded in warding off a war with America and the
19 present European war came to an end, the desire for
20 peace would not be impossible to be created after the
21 war and that, therefore, it might be possible to get
22 politics to follow their proper course until that
23

24 607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.
25 608. Aff. par. 187, Tr. 30,946-30,947.

1 time through making redoubled efforts to reconstruct
2 politics and to check the military. His views were
3 expressed to KONOYE for the purpose of having KONOYE
4 convince the militarists of the hopelessness of war
5 with America.⁶⁰⁹

6 195. If the guilt or innocence of KIDO depends
7 upon the prosecution's interpretation of KIDO's diary,
8 we ask as a sample that the Tribunal examine KIDO's
9 diary and his interpretation of the diary entry out-
10 lined above. Then compare the prosecution's inter-
11 pretation of this diary today with its interpretation
12 of the same entry on January 30, 1947.⁶¹⁰ Today the
13 prosecution gives its interpretation of that diary
14 entry and says in conclusion:

15 "We submit that this is the advice of a man
16 who fully shares the aims of the militarists but not
17 their confidence in immediate success; for success
18 he is prepared to wait ten years."⁶¹¹

19 On January 30, 1947, in referring to this
20 same diary entry, the prosecution concluded:

21 "No doubt if his advice had been taken we
22 should not be holding this trial today; and if he had
23

24 609. Aff. par. 187, Tr. 30,947.

25 610. Pros. doc. 0003, Tr. 16,852.

611. Par. JJ-65, Tr. 41,105.

resigned when it was rejected we might not have included him except with regard to China."

We ask that the Tribunal read this diary entry and accept KIDO's clearcut explanation thereof.⁶¹³ Here again, if there was any doubt as to what KIDO meant, cross-examination of him on this entry would have been of assistance to the Tribunal. Apparently, on January 30, 1947, the prosecution took the view that this diary entry of August 7, 1941, shows that KIDO could not be held criminally liable for the Pacific war but today the prosecution evidently has changed its view. (It cites no additional testimony to support its changed view. It still confines its opinion to the same diary entry.) Is the judgment of this Tribunal on this particular point to be based on either of the prosecution's interpretations of the diary or on KIDO's uncontested explanation thereof? If the prosecution's interpretation is to be taken, which one, the one of January 30, 1947, or today's? Even if for the sake of argument we were to accept prosecution's conclusions that KIDO favored the aims of the militarists but that he was prepared to wait for ten years, this still is not a crime under the

612. Pros. doc. 0003, Tr. 16,852.

613. Aff. par. 187, Tr. 30,946-30,947.

1 Charter or the Indictment. There is no charge in
2 the Indictment for a war to occur ten years from now
3 nor is it part of any conspiracy for two reasons.
4 In the first place, he is not being charged for any
5 conspiracy to commence a war ten years from now, and
6 secondly there is no evidence that anyone agreed or
7 conspired with him to do so. He stood alone on this.
8 Apparently realizing this, the prosecution attempts
9 to drag him back into the conspiracy counts by
10 stating, "His doubts are clearly based on those of
11 NAGANO a week earlier. Later when NAGANO changed
12 his view KIDO fell in with the rest." ⁶¹⁴ The prosecu-
13 tion cites no evidence supporting the last amazing
14 sentence.
15
16
17
18
19
20
21
22
23
24
25

W
o
l
f

1 With respect to the first sentence, the
2 prosecution merely cites an exhibit ⁶¹⁵ without
3 explanation. That exhibit is KIDO's Diary of July 31,
4 1941, wherein KIDO sets forth the conversation he had
5 with the Emperor. The Emperor told KIDO that Admiral
6 NAGANO had made a report to the Emperor stating that
7 in the Navy's opinion war should be averted as much
8 as possible; that NAGANO opposed the Tri-Partite Alliance
9 and so long as it existed, the adjustment of Japanese-
10 American diplomatic relations would be impossible and
11 if they were impossible and oil was cut off and war
12 broke out with America, the oil would only be sufficient
13 for one and one-half years. When the Emperor asked
14 NAGANO if it would be possible to win a sweeping
15 victory, NAGANO replied: "****it was even doubtful
16 whether or not we would ever win, to say nothing of
17 a great victory as in the Russo-Japanese War." KIDO
18 said in his diary:

19 "I was filled with trepidation by the Imperial
20 anxiety about the danger of having to wage a desperate
21 war."
22

23 It further shows KIDO's answer to the Emperor
24 was that NAGANO's opinion was too simple. KIDO told
25 the Emperor that he was doubtful whether Japan could
615. Ex. 1125, T. 10,186 as Cor. By Lang. Sec., t. 10,667.

1 have the confidence of the United States if she
 2 annulled the Tri-Partite Pact or whether she would
 3 be held in contempt if she annulled it. The diary
 4 also shows he further advised the Emperor:

5 "There are several means to be tried regarding
 6 the relationship between America and Japan. We must
 7 deliberate patiently on the matter in a constructive
 8 manner. I would urge the Premier's careful consideration
 9 on this point."

10 Are these the words of a criminal, ⁶¹⁶ a
 11 murderer, ⁶¹⁷ a gangster, ⁶¹⁸ an aggressor at heart? ⁶¹⁹

12 From the foregoing it is apparent that KIDO had no
 13 doubt that war with the United States could never
 14 succeed. It also shows that he was opposed to it and
 15 advocated constructive deliberation. There is no
 16 evidence nor does the prosecution cite any evidence
 17 showing that he ever, "fell in with the rest." On
 18 the contrary as will be shown, he continued to hold
 19 to his views in opposition to the rest.

20 XII. (e) The End of the Third KONOYE
 21 Cabinet, September 1, 1941 - October 15, 1941

22 196. When KONOYE went to the Palace on

23
 24 616. Indictment.
 25 617. Indictment.
 618. T. 31,544.
 619. T. 16,852.

1 September 5, 1941 to submit the agenda for the proposed
2 Imperial Conference he showed it to KIDO and it
3 consisted of three points. 1. War preparations be
4 made against America and Britain. 2. In parallel,
5 the negotiation with America be pushed very hard.
6 3. In case no prospect of an amicable conclusion
7 of the negotiation with America came in sight by the
8 first ten days of October, Japan make up her mind to
9 wage war with America and Britain.⁶²¹ This was the
10 first time KONOYE had made any reference to the
11 question which was now abruptly presented to KIDO.
12 KIDO told KONOYE such a serious plan should not be
13 presented to the Emperor so suddenly as it would
14 embarrass the Emperor because he would not have time
15 to think it over. He also told KONOYE it was dangerous
16 to fix a time limit and asked if it was not possible
17 to modify even this point alone, and if the plan was
18 not abandoned it might lead to war. KONOYE told him
19 that it had already been decided at the Liaison
20 Conference between the Government and the High Command
21 and it was therefore difficult to either modify or
22 give up the plan. KONOYE added that there was no
23 alternative left for him but to devote his efforts to
24 bringing the negotiations to an amicable conclusion.⁶²²
25

621. Aff. par. 190, T. 30,948-30,949.

622. Aff. par. 190, T. 30,949.

to him to which KONOYE found it impossible to reply
and asked the Emperor to summon the Chiefs of Staff
of the Army and Navy. 623

Thereafter KIDO was received
in audience and told the Emperor to follow the Premier's
advice of summoning the Chiefs of Staff which he did
and KIDO requested the Aide de Camp to call the Chief
of the General Staff, the Chief of the Naval General
Staff and the Premier to the Palace. 624

198. After the audience which Prince KONOYE
and the Chiefs of Staff had with the Emperor, KONOYE
told KIDO that the Emperor asked Marshal SUGIYAMA
when the southern campaign would be terminated and
he replied in a short period of time. The Emperor
reprimanded him reminding him that he had said a
similar thing at the outbreak of the China Incident.

Fleet Admiral NAGANO also told the Emperor that if
things went on as they were Japan would lose but there
would be a hope of recovery if a drastic operation is
undergone and that is war. KONOYE said that the
Emperor asked why diplomatic negotiations were not
placed first to which KONOYE replied that the planning
623. Aff. par. 191, T. 30,950, Ex. 1134, T. 10,215 as
Cor. Lang Sec., T. 10,668.
624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;
Ibid.

It
for
retirement
called
at 7 p.m."
here is no
with KONOYE
se. This
.M. the Premier
to the Throne

19 trans-
20 before KONOYE 628
21 same exhibit received
22 proceeded to the Palace and sub-

24 625. Aff. par. 192, T. 30,952.
25 626. Par. JJ-66, T. 41,106.
627. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,
and additional excerpt in KIDO's affidavit Par.
199, T. 30,951.
628. Ibid.

197. When KONOYE submitted the agenda to
 1 the Throne His Majesty put various strategical questions
 2 to him to which KONOYE found it impossible to reply
 3 and asked the Emperor to summon the Chiefs of Staff
 4 of the Army and Navy. ⁶²³ Thereafter KIDO was received
 5 in audience and told the Emperor to follow the Premier's
 6 advice of summoning the Chiefs of Staff which he did
 7 and KIDO requested the Aide de Camp to call the Chief
 8 of the General Staff, the Chief of the Naval General
 9 Staff and the Premier to the Palace. ⁶²⁴

11 198. After the audience which Prince KONOYE
 12 and the Chiefs of Staff had with the Emperor, KONOYE
 13 told KIDO that the Emperor asked Marshal SUGIYAMA
 14 when the southern campaign would be terminated and
 15 he replied in a short period of time. The Emperor
 16 reprimanded him reminding him that he had said a
 17 similar thing at the outbreak of the China Incident.
 18 Fleet Admiral NAGANO also told the Emperor that if
 19 things went on as they were Japan would lose but there
 20 would be a hope of recovery if a drastic operation is
 21 undergone and that is war. KONOYE said that the
 22 Emperor asked why diplomatic negotiations were not
 23 placed first to which KONOYE replied that the planning
 24 623. Aff. par. 191, T. 30,950, Ex. 1134, T. 10,215 as
 25 Cor. Lang Sec., T. 10,668.
 624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;
 Ibid.

1 was aimed at attaching primary importance to diplomatic
 2 negotiations and requested the Emperor to approve the
 3 plan since it had been decided by the Liaison Conference.⁶²⁵

4 199. The prosecution says: "****there is
 5 no trace whatever in the Diary****" of a conversation
 6 between KONOYE and KIDO related in KIDO's Affidavit
 7 as having taken place after KONOYE and the Chiefs of
 8 Staff had seen the Emperor on the 5th of September
 9 1941.⁶²⁶ The Diary entry⁶²⁷ shows the conversation
 10 was held:

11 "I requested Aide de Camp YOKOYAMA to call
 12 the Chief of the General Staff, the Chief of the
 13 Naval General Staff and the Premier to the Palace. At
 14 6 P.M. they were granted an audience by the Emperor
 15 to answer the Imperial questions. After this retirement
 16 from the presence of the Emperor, the Premier called
 17 on me to have a talk with me. He took leave at 7 p.m."

18 200. The prosecution also says there is no
 19 trace in the diary of KIDO's conversation with KONOYE
 20 before KONOYE saw the Emperor on that date. This
 21 same exhibit⁶²⁸ recites that "At 4:30 P.M. the Premier
 22 proceeded to the Palace and submitted to the Throne
 23

24 ^{625.} Aff. par. 192, T. 30,952.

25 ^{626.} Par. JJ-66, T. 41,106.

^{627.} Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,
 and additional excerpt in KIDO's affidavit Par.
 199, T. 30,951.

^{628.} Ibid.

1 a plan relative to the holding of a council in the
2 Imperial presence." It is quite apparent that since
3 KIDO knew the exact time KONOYE went in to see the
4 Emperor he must have seen him and talked with him,
5 and the entry shows KIDO knew what KONOYE was going
6 to submit to the Emperor.

7 201. The Council in the Imperial Presence
8 was held on September 6th, 1941. Before being summoned
9 by the Emperor that morning KIDO had a conversation
10 with Mr. HARA, President of the Privy Council. They
11 discussed questions which HARA should ask at the
12 Imperial Conference pointing toward emphasis on
13 continuance of diplomatic negotiations rather than
14 preparations for war. The Emperor told KIDO that he
15 would like to ask some questions at the Conference
16 and KIDO told him that since HARA was going to ask
17 important questions on behalf of the Emperor that the
18 Emperor should, in view of the importance of the
19 question, warn the High Command to exert every effort
20 to bring the diplomatic negotiations to an amicable
21 conclusion.⁶²⁹ This specifically appears in KIDO's
22 ⁶³⁰Diary of September 6th, 1941 as follows:

23 "Then I advised His Majesty that since HARA,
24
25

629. Aff. par. 192, T. 30,953.

630. Ex. 1135, as Cor. Lang. Sec. T. 31,420.

the President of the Privy Council, would ask important questions on His Majesty's behalf, the Emperor should give a warning in conclusion that the Supreme War Command should exert every effort in order to bring about a diplomatic success inasmuch as the present decision was such an important one that it might lead to a war in which our national fortunes would be staked."

In view of this advice can it be fair to brand KIDO "***on aggressor at heart?"⁶³¹ Does that warning suggested by KIDO show a criminal mind?

202. KIDO did not attend the Imperial Conference.⁶³² As shown in his diary KIDO was advised

that HARA asked the questions and the Emperor gave a warning as suggested by KIDO. This is corroborated by OIKAWA.⁶³³ OIKAWA also testified that the Emperor

took the High Command to task for not answering the questions put by HARA.⁶³⁴ That HARA asked the questions and the Emperor gave the warning was also corroborated by TOJO.⁶³⁵

203. There is no merit to any contention that

- 631. Pros. Doc. 0003, T. 16,852.
- 632. Ex. 1135, as cor. Lang Sec. T. 31,420, Aff. par. 193, T. 30,953.
- 633. T. 34,600-34,602.
- 634. T. 34,602.
- 635. T. 36,512, 36,513.

1 KIDO tried to persuade the Emperor not to ask his own
 2 questions.⁶³⁶ As KIDO pointed out on cross-examination⁶³⁷
 3 and as shown in his diary⁶³⁸ KIDO believed that HARA
 4 should ask the questions as to whether or not emphasis
 5 was to be placed on war preparations or the continuance
 6 of diplomatic negotiations and the Emperor himself
 7 should give a warning on the more important point
 8 that the High Command should exert every effort in
 9 order to bring about diplomatic success. This point
 10 apparently has been overlooked by the prosecution.
 11 The diary clearly shows KIDO's opposition to war.

12 204. The prosecution also states that the
 13 conversation KIDO had with HARA before KIDO spoke
 14 with the Emperor is not mentioned in the diary.⁶³⁹ The
 15 diary entry specifically shows from the tense used
 16 that KIDO did have a prior conversation with HARA. In
 17 the original translation of this diary entry the word
 18 "only" appeared between the words "the Emperor should"
 19 and "give a warning", which was eliminated by the
 20 Language Section during KIDO's cross-examination on
 21 October 21, 1947.⁶⁴⁰

23 636. Par. JJ-70, T. 31,369.

24 637. T. 31,371.

24 638. Ex. 1135 as cor. Lang. Sec. T. 31,420.

25 639. Par. JJ-67, T. 41,106.

25 640. T. 31,420.

1 205. KIDO describes the conversation he and
2 KONOYE had on September 26, 1941, about KONOYE's desire
3 to resign and KIDO's suggestion that the decision of
4 September 6, 1941, should be reviewed, ⁶⁴¹ which conver-
5 sation was only summed up in his diary by the statement
6 that "I advised him to be prudent." ⁶⁴² The prosecution
7 says his diary does not suggest such a conversation.
8 Again no cross-examination. The diary entry does not
9 suggest anything to the contrary and there is no evidence
10 in the case that anything to the contrary was said and
11 furthermore it does not show a criminal mind.

12 206. In an excerpt from the diary of Ambassador
13 Grew entitled "Ten Years in Japan," there appears the
14 substance of a paraphrase of an original text prepared
15 by the Department of State, September 29, 1941, entitled
16 "The Ambassador in Japan Reports to the Secretary of
17 State" as follows: ⁶⁴³

18 "Since the fall of Admiral YONAI's Cabinet in
19 July of 1940, American diplomacy in Japan has been in
20 eclipse temporarily through force of circumstances. How-
21 ever, when the KONOYE-TOYODA regime began last July,
22 American diplomacy obtained a very active new lease of
23 life."
24
25

(641. Ex. 1141, T. 10230.

642. Par JJ-68, T. 41107.

643. Ex. 2837, T. 25376-7.)

1 Ambassador Grew recalled " * * * that it was not then
2 possible under the existing circumstances for any
3 Japanese leader or group to reverse the program of ex-
4 pansion and expect to survive; * * * "

5 207. We ask that the Tribunal examine KIDO's
6 diary entry of October 9, 1941. ⁶⁴⁴ It definitely shows
7 that KIDO submitted to KONOYE his opinion that the
8 resolution of the council in the Imperial Presence on the
9 6th of September was too outright and it was not the
10 conclusion of exhaustive discussion; that the reconsider-
11 ation be given to a war with American and advised him
12 that it would be inadvisable to declare war against the
13 United States immediately; it should be made clear that
14 the termination of the China Incident is the first con-
15 sideration and that freedom should be acquired by Japan
16 without paying any attention to economic pressure by the
17 United States. He also advised that the people should be
18 made to understand the necessity for ten or fifteen years
19 of hard struggle on the part of Japan and to establish
20 a highly defensive nation. He also suggested if neces-
21 sary, Japan was ready by belligerency to promote the
22 completion of the China Incident. As KIDO explained in
23 his affidavit ⁶⁴⁵ he expounded his opinion to KONOYE so that
24 KONOYE could use it in arguing with the military. He

(644. Ex. 1146 as cor. Lang. Sec. T. 11139.
645. Aff. pars. 200, 201, T. 30960-2.)

1 took great pains in carefully impressing KONOYE with the
2 logic of his opinion. As he said the situation at that
3 time was so bad that he knew the Army would never agree
4 unless some positive diversionary attitude was put
5 forward and it was for this reason that he suggested
6 completion of the China Incident. The military would not
7 listen to any plan which meant entire cessation of
8 hostilities so he suggested if they must fight they
9 should confine their activities to China. It was a sop
10 he was offering in a situation which afforded no other
11 alternatives. It was the only solution to avoidance of
12 a clash with America.⁶⁴⁶ It is quite apparent that if
13 KIDO had been successful in dissuading the military the
14 question after that would take care of itself in that if
15 the European war was brought to an end in the meantime a
16 big change would occur in the world situation with a
17 powerful peace movement sweeping over the world and Japan
18 might be saved. It is quite clear that his intention
19 was inspired by the desire to absolutely avoid war with
20 the United States by progressing in the proper direction
21 slowly but steadily. The prosecution barely mentions the
22 contents of KIDO's diary of October 9, 1941, in comment-
23 ing that its remarks directed to the entry of August 7,
24 1941, apply to the entry of October 9, 1941.⁶⁴⁷ But
25

(646. Aff. par. 201, T. 30962.

647. Par. JJ-70, T. 41107.)

1 those remarks ⁶⁴⁸ refer to a few words which do not appear
2 in the latter entry. The prosecution however recognizes
3 that the diary entries of August 7, 1941, and October 9,
4 1941, are similar. It apparently recognized that KIDO's
5 reasoning in the entry of August 7, 1941, was correct,
6 and its remarks regarding it are likewise applicable
7 here -- "No doubt, if his advice had been taken we
8 should not be holding this trial today* * *. "⁶⁴⁹

9 THE PRESIDENT: We will recess for fifteen
10 minutes.

11 (Whereupon, at 1045, a recess was
12 taken until 1100, after which the proceed-
13 ings were resumed as follows:)

14 - - -
15
16
17
18
19
20
21
22
23
24

25 (648. Par. JJ-65, T. 41104-5.
649. Pros. Doc. 0003, T. 16852.)

K
a
p
l
e
a
u
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If the Tribunal please, I shall
5 continue reading KIDO's summation, page 178, paragraph
6 208.

7 On October 12, 1941 the Ogibuko Conference
8 was held at Prince KONOYE's house. There were present
9 War Minister TOJO, Navy Minister OIKAWA, Foreign
10 Minister TOYODA, Prince KONOYE and SUZUKI, President
11 of the Planning Board. TOMITA, Chief Secretary to
12 the Cabinet, reported the result of that conference
13 to KIDO and it is fully set forth in his diary of that
14 day.⁶⁵⁰ According to the information KIDO received
15 TOJO contended that the Government should make up its
16 mind to wage war with America in accordance with the
17 decision of the Imperial Conference of September 6th
18 as he thought there was no hope for the negotiations
19 with America. He added, however, that he did not want
20 war if an explanation convincing enough was forthcoming
21 that the negotiations would be brought to an amicable
22 solution with confidence. Navy Minister OIKAWA said
23 in substance that he thought there was still hope for
24
25 650. Ex. 1147, Tr. 10246 as Corrected by Language
Section, Tr. 11139.

1 negotiations, that it was desired that Japan come to
2 terms with America even making considerable concessions
3 and that it would be embarrassing to conduct diplomatic
4 negotiations for some time and then start war. For-
5 eign Minister TOYODA said he thought there was some
6 hope for negotiations but that it was impossible to
7 make any prediction as they had to reckon with America.
8 Prime Minister KONOYE stated that there was still hope
9 for the negotiations which he would like to continue.
10 The War Minister was not satisfied with the Prime
11 Minister's explanation. The Conference adjourned
12 after it was decided to draft a memorandum and entrust
13 the Foreign Minister with its study. KIDO's testimony
14 on the Ogikubo Conference is corroborated by KONOYE's
15 Memoirs,⁶⁵¹ MUTO⁶⁵² and SUZUKI.⁶⁵³

16
17 209. TOMITA also told KIDO that from the
18 conversations he had with Admirals OKA and OIKAWA that
19 the Navy was opposed to war but could not openly
20 express its views and would leave it to the Prime
21 Minister to make a decision whether or not Japan should
22 go to war with America. This is also corroborated by
23 KONOYE's Memoirs in so far as OIKAWA is concerned.⁶⁵⁴

24 651. Ex. 2913, Tr. 25862-25865.

25 652. Ex. 3454, Tr. 33104.

653. Tr. 35251-35253.

654. Ex. 2913, Tr. 25862-25865.

210. In commenting on KIDO's diary entry of October 12, 1941,⁶⁵⁵ the prosecution says that KIDO rightly interprets OIKAWA's statement as "even making considerable concessions."⁶⁵⁶ That is not an interpretation of KIDO. It is a report of what OIKAWA said at the Ogikubo Conference as related to KIDO by TOMITA.⁶⁵⁷ The prosecution then remarks, "If KIDO had ever given similar advice he would have shown his sincerity." KIDO's advice on many occasions went far beyond the mere granting of concessions. For example, as shown in his diary entries of July 31, 1941,⁶⁵⁸ August 7, 1941,⁶⁵⁹ September 6, 1941,⁶⁶⁰ October 9, 1941,⁶⁶¹ October 17, 1941,⁶⁶² October 20, 1941,⁶⁶³ November 19, 1941, November 26, 1941,⁶⁶⁴ and November 30, 1941,⁶⁶⁵ he was opposed to war under any circumstances.

655. Ex. 1147, Tr. 10246 as Corrected by Language Section, Tr. 11139.

656. Affidavit, par. 202, Tr. 30964; par. JJ-71, Tr. 41108.

657. Par. JJ-71, Tr. 41107, 41108.

658. Ex. 1125, Tr. 10186 as Corrected by Language Section, Tr. 10667.

659. Ex. 1130, Tr. 10199 Ibid.

660. Ex. 1135, Tr. 10216 as Corrected by Language Section, Tr. 31420.

661. Ex. 1146, Tr. 10241, as Corrected by Language Section, Tr. 11139.

662. Ex. 1154, Tr. 10291, as Corrected by Language Section, Tr. 11142.

663. Ex. 1156, Tr. 10295.

664. Ex. 1190, Tr. 10429, as Cor. Lang. Sec. Tr. 11143.

665. Ex. 1198, Tr. 10468, as Cor. Lang. Sec. Tr. 12480.

1 211. As shown, everyone's opinion at the
2 Ogikubo Conference of October 12, 1941 hinged on the
3 success or failure of negotiations with America.
4 Although TOJO did express his opinion with regard to
5 the stationing of troops in China and refused to
6 entertain anything that might affect the result of
7 the China Incident, his viewpoint changed before he
8 was appointed Prime Minister. Thus the last important
9 meeting held during the existence of the Third KONOYE
10 Cabinet ended with no decision as to whether or not
11 Japan would go to war with America.

12 212. On October 13, 1941 as a result of the
13 Ogikubo Conference the political atmosphere became so
14 tense that it was feared that a war might break out at
15 any moment under forcible pressure of the militarists.
16 The situation was so delicate that the Emperor on that
17 day showed his concern when he discussed with KIDO an
18 Imperial Rescript in case he was required to grant
19 sanction to the opening of war. This is shown in
20 KIDO's Diary of October 13, 1941, only a small portion
21 of which was processed by the prosecution.⁶⁶⁶ That
22 evening SUZUKI visited KIDO and told him his political
23 views which might contribute in some way " * * * to
24 the making of a new turn in our political condition."
25

666. Aff. par. 204, Tr. 30969.

1 SUZUKI was in fear of a possible change of government
 2 or a sudden plunge into war due to the intensified
 3 political situation.⁶⁶⁷ KIDO expressed his views to
 4 the effect that KONOYE should assume a resolute
 5 attitude and have a full talk with the War and Navy
 6 Ministers in order to solve the dilemma by some means
 7 in order to arrive at a peaceful solution.⁶⁶⁸

8 213. KIDO is accused of adding a gloss to
 9 his diary of October 13, 1941.⁶⁶⁹ The prosecution
 10 claims that the diary states that KIDO and SUZUKI
 11 agreed that KONOYE must try to promote mutual under-
 12 standing between the War and Navy Ministers but that
 13 KIDO adds the words to his diary "to bring about the
 14 peaceful solution."⁶⁷⁰ The prosecution however im-
 15 pliedly admits that KIDO had hoped for peaceful
 16 solution because of hesitation of the Navy.⁶⁷¹ In
 17 its interpretation of this diary entry the prosecution
 18 omits to inform the Tribunal and makes no comment on
 19 the fact that the diary entry clearly states that
 20 SUZUKI and KIDO were talking about some way of
 21 " * * * making of a new turn in our political condi-
 22 tion."⁶⁷² No one has offered any contradictory

24 667. Aff. par. 204, Tr. 30971.

25 668. Aff. par. 204, Tr. 30971.

669. Ex. 1149, Tr. 10274.

670. Aff. par. 204, Tr. 30971.

671. Par. JJ-72, Tr. 41109.

672. Aff. par. 204, Tr. 30971.

1 evidence and no one could possibly say that the new
 2 turn in political conditions referred to anything
 3 other than a peaceful solution. It must be remembered
 4 that this was in the middle of October 1941 when,
 5 according to the Imperial decision of September 6,
 6 1941, a decision for war was to be made. Time was
 7 running out. The prosecution does not comment on the
 8 fact that the Emperor was so apprehensive that he
 9 discussed with KIDO what should be done "in case we
 10 decide on war with the United States and Britain,"⁶⁷³
 11 yet it refers to the same exhibit in which it is con-
 12 tained.⁶⁷⁴ It is concerning this critical period that
 13 the prosecution, in its summation, makes the revealing
 14 statement: "We submit that KIDO was only interested
 15 in securing agreement no matter what it was."⁶⁷⁵ As
 16 pointed out heretofore, this clearly shows that even
 17 the prosecution admits that it has failed to prove
 18 that KIDO had a criminal mind.
 19

20 214. In analyzing the situation as it
 21 existed on or about October 13, 1941 the prosecution
 22 makes three statements. (1) It refers to the China
 23 Incident and concludes "* * * for which no one was
 24 more clearly responsible than KIDO."⁶⁷⁶ In answer

25 673. Aff. par. 204, Tr. 30970.

674. Aff. par. 204, Tr. 30969.

675. Par. JJ-72, Tr. 41109.

676. Par. JJ-72, Tr. 41108.

1 need we point out that KIDO was not even in the Cabinet
2 when the China Incident started? The prosecution
3 even abandoned Count 19 which charged him with starting
4 this Incident.⁶⁷⁷ (2) With respect to the United
5 States, Britain and the Netherlands refusing to
6 supply Japan with oil in particular, the prosecution
7 says: "They had at last refused to do so."⁶⁷⁸ This,
8 of course, had occurred three months previously, not
9 in October 1941. (3) It sets up three possible
10 courses which were open, the second of which was to
11 make war upon the A.B.C.D. powers and then states:
12 "TOJO had declared himself for No. 2."⁶⁷⁹ The prose-
13 cution gives no citation for this and there is no
14 evidence of such a decisive declaration. The prose-
15 cution, without any evidence to support it, submits
16 a conjectural analysis of the three possible courses
17 which were open to Japan at that time. It is inter-
18 esting to note that in so doing the prosecution does
19 not suggest nor comment on the facts referring to
20 the course suggested at the Ogikubo Conference of
21 October 12, 1941 which KIDO did not attend. It was
22 there suggested to continue negotiations with the
23 United States and if successful "* * * all operational
24

25 677. Par. JJ-89, Tr. 41128.

678. Par. JJ-72, Tr. 41108-41109.

679. Par. JJ-72, Tr. 41109.

preparations be discontinued." ⁶⁸⁰

XII. (f) The Recommendation of TOJO as Premier.

215. We now approach the decision around which the prosecution's interest in KIDO chiefly lies: the recommendation of TOJO as Premier. The question to be answered is "Did KIDO have a criminal mind in the part he played in this critical period in Japan's history?" The evidence is overwhelming that he did not. In none of the contemporary documents nor in the subsequent testimony adduced at this trial is there any evidence that he did. To hold that KIDO recommended TOJO to lead Japan to war would necessitate a decision diametrically opposed to the evidence in this case.

216. The principal persons who were considered for the Premiership were Prince HIGASHIKUNI, General UGAKI, Admiral OIKAWA and General TOJO. An examination of the evidence discloses that the part KIDO played in the recommendation was that of a man sincerely and honestly desirous of avoiding war. The evidence discloses ⁶⁸¹ beyond peradventure of doubt

680. Diary, Ex. 1147, Tr. 10246, as Corrected by Language Section, Tr. 11140.

681. Aff. par. 205-219, Tr. 30972-31021.

Ex. 2250, Tr. 16198.

Ex. 1148, Tr. 10250, 10266-10267

1 that KIDO believed a Premier was needed who could
2 cope with the following problems:

3 1. The interpretation of the decision of the
4 Imperial Conference of September 6, 1941, which was
5 the cause of the fall of the KONOYE Cabinet.

6 2. A repeal of that decision so as to
7 start afresh with a clean slate.

8 3. After the decision was repealed a re-
9 examination of the diplomatic negotiations with
10 America so as to study the question from a new angle
11 and bring about successful negotiations.

12 4. The control of the younger militarists
13 who were pressing for war and to this end the Premier
14 should be able to control and effect harmony and co-
15 operation in the Army itself and between the Army and
16 the Navy in full pursuance of Imperial wishes.

17 5. An acquaintance with the events and
18 decisions of the past few months; and ability to
19 reflect upon and appraise them accurately; and to
20 this end one who was an outsider would not be able
21 to understand them properly thus defeating the purpose
22 of the cabinet change.

23
24 217. If KIDO had a criminal mind and was
25 seeking to recommend a Premier to lead Japan success-
fully into war it is only reasonable to say that he

1 would never have given a thought to any of the above
2 mentioned matters. All his thoughts, all his acts
3 and all his energies would have been devoted to the
4 question: who could best lead Japan to victory? The
5 absence of such evidence is decisive. The presence
6 of documentary evidence written at that time, showing
7 that KIDO was only interested in avoiding the war,
8 is entitled to the greatest weight of probity,
9 credibility and accuracy. As opposed to this the
10 Tribunal is asked to accept the prosecution's
11 specious arguments, unsupported by the evidence and
12 which confuse rather than clarify the facts. Let us
13 now examine the facts step by step.

14 218. On October 15, 1941 the question of
15 a cabinet headed by Prince HIGASHIKUNI arose. As
16 shown, KIDO, Imperial Household Minister MATSUDAIRA,
17 Tsuneo, and the Emperor were opposed to this.⁶⁸² The
18 advocates of a HIGASHIKUNI Cabinet had different
19 motives. Prince KONOYE desired it as he believed it
20 would restrain the Army and avert war.⁶⁸³ As for the
21 Army, even granted that War Minister TOJO was like-
22 minded as Prince KONOYE, there was grave doubt as to

23 682. Ex. 1150 as Corrected by Language Section, Tr.
24 11140; Aff. par. 206, Tr. 30996-30980.

25 683. Aff. par. 205, Tr. 30972; KONOYE's Memoirs,
Ex. 1148, p. 9, Tr. 10266-10267.

1 the real motives of the military officers who formed
2 the mainstay of the Army. The possibility of availing
3 themselves of the Prince's position as Prime Minister
4 and dragging the country into war was in full evidence
5 because the Prince's entourage included many dangerous
6 elements. It would have been impossible to purge
7 those elements if Prince HIGASHIKUNI formed the
8 succeeding cabinet. In addition, Prince HIGASHIKUNI,
9 although talented, was lacking in political exper-
10 ience and training and as the situation was extremely
11 difficult it would have been well nigh impossible for
12 the Prince to grasp the situation and work out a plan
13 to cope with it. The foregoing appears in KIDO's
14 testimony.^{684.}

15 219. As KIDO pointed out in his affidavit:⁶⁸⁵

16 "The result would be that the Prince would
17 be reduced to a mere figurehead, and actual political
18 power would be assumed by the Deputy Prime Minister.
19 And judging by personalities, available at that time,
20 the probability was quite high that the post of
21 Deputy Premier would be concurrently assumed by the
22 Minister of War. Such being the case, the possibility
23 of averting war would be very slim under the
24

25 684. Aff. par. 205, Tr. 30973.

685. Aff. par. 205, Tr. 30974.

1 the real motives of the military officers who formed
2 the mainstay of the Army. The possibility of availing
3 themselves of the Prince's position as Prime Minister
4 and dragging the country into war was in full evidence
5 because the Prince's entourage included many dangerous
6 elements. It would have been impossible to purge
7 those elements if Prince HIGASHIKUNI formed the
8 succeeding cabinet. In addition, Prince HIGASHIKUNI,
9 although talented, was lacking in political exper-
10 ience and training and as the situation was extremely
11 difficult it would have been well nigh impossible for
12 the Prince to grasp the situation and work out a plan
13 to cope with it. The foregoing appears in KIDO's
14 testimony.^{684.}

15 219. As KIDO pointed out in his affidavit:⁶⁸⁵

16 "The result would be that the Prince would
17 be reduced to a mere figurehead, and actual political
18 power would be assumed by the Deputy Prime Minister.
19 And judging by personalities, available at that time,
20 the probability was quite high that the post of
21 Deputy Premier would be concurrently assumed by the
22 Minister of War. Such being the case, the possibility
23 of averting war would be very slim under the
24

25 684. Aff. par. 205, Tr. 30973.

685. Aff. par. 205, Tr. 30974.

HIGASHIKUNI Cabinet."

1 The prosecution guesses that the Deputy
2 Prime Minister would probably be TOJO and that there-
3 fore KIDO well knew that the possibility of avoiding
4 war was even slimmer when TOJO became Premier.⁶⁸⁶ In
5 addition to the fact that the probabilities were that
6 Prince HIGASHIKUNI would have appointed one of his own
7 adherents as War Minister, the evidence is that it
8 would not have been TOJO because according to KONOYE's
9 memoirs⁶⁸⁷ TOJO's opinion was that if Prince HIGASHI-
10 KUNI was appointed, "I believe that there is no other
11 alternative but to return the decision of the recent
12 Imperial Conference back to a clean slate once more
13 by all of us, even including all of the Supreme
14 Command resigning and to start anew with new men
15 coming forward." It is therefore apparent that the
16 prosecution's guess that the new Deputy Prime Minister
17 would have been TOJO is contrary to the evidence.

19 220. The prosecution states with respect
20 to the appointment of a HIGASHIKUNI Cabinet "* * *
21 KIDO would only agree to it if a common policy had
22 previously been worked out between the Army and Navy."⁶⁸⁸
23 The prosecution then states: "Again the diary contains

24 686. Par. JJ-73, Tr. 41110.

25 687. Ex. 1148, Tr. 10265.

688. Par. JJ-73, Tr. 41110.

no indication what this common policy should be,
 but Paragraph 205 of the affidavit supplies the
 usual gloss * * *." ⁶⁸⁹ The diary entry of October
 15, 1941, ⁶⁹⁰ which the prosecution had before it,
 clearly shows what the common policy between the
 Army and Navy should be and KIDO's affidavit contains
 no gloss. The diary specifically states:

"The Premier, who joined our conversation
 on his withdrawal from the presence of the Emperor,
 said that when he made a report to the Emperor on the
 proposed plan, His Majesty said that if the Army and
the Navy agreed upon the peaceful policy and it is
 the outcome of necessity to have the Prince's Cabinet,
 then there was no alternative but to approve the
 plan." ⁶⁹¹

The diary then relates that KIDO had a talk
 with the Premier and later had a telephone conversa-
 tion with SUZUKI and according to SUZUKI's report:
 "TOJO's purpose was to establish harmony between the
 Army and the Navy by the influence of the Prince." ⁶⁹²
 As the diary further shows, KIDO then made the

⁶⁸⁹ Pap, JJ-73, Tr. 41110.

⁶⁹⁰ Ex, 1150 as Corrected by Language Section,
 Tr, 11140; Aff. par. 206, Tr. 30976-30980.

⁶⁹¹ Ibid., Tr. 30979.

⁶⁹² Aff. par. 206, Tr. 30979.

1 significant statement: "So I objected to the plan."⁶⁹³
2 This definitely shows that KIDO and the Emperor were
3 opposed to a HIGASHIKUNI Cabinet unless the Army and
4 Navy first agreed upon a peaceful policy. In addi-
5 tion, KIDO's Diary of October 16, 1941⁶⁹⁴ substan-
6 tiates this position.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

693. Aff. par. 206, Tr. 30979.

694. Ex. 1151, Tr. 10281 as Corrected by Language
Section, Tr. 11141.

1 all-out war and gambling the fate of the country." 698

2 (The prosecution only quoted part of this
3 statement.) 699 The exhibit further states that TOJO

4 completely agreed with KIDO's opinion and said:

5 "... that the decision of the Council in the
6 Imperial presence was a cancer and that this war could
7 not be carried out without the firm confidence of the
8 navy." 700

9 In his affidavit 701 KIDO recites, with respect
10 to this interview with TOJO:

11 "... I stated that it was needless to say
12 that the decision of the Imperial Conference was ex-
13 tremely important and therefore must be respected and
14 faithfully executed, but asked him if it was not proper
15 to reconsider in case there was found any point mani-
16 festing want of care therein because I thought the
17 decision was careless. I drew his attention to the
18 report that the navy necessarily had no confidence in
19 itself. Thereupon, the War Minister agreed with me,
20 adding that the decision of the Imperial Conference
21 could not be executed as it was..."

22
23 222. These three consistent recitals of the
24 facts demonstrate a recognition by KIDO of the evil

25 698. Ex. 2250, tr. 16,206 - 16,207

699. Par. JJ-74, tr. 41,111

700. Ex. 2250, tr. 16,207

701. Ex. par. 209, tr. 30,983

of the September 6 decision, and that a reconsideration was necessary. There is no merit to the prosecution's contention that there is no other contemporary document on this matter. The diary⁷⁰² and the account written in November 1941⁷⁰³ which were contemporary, are supported by the Senior Statesmen's Conference of October 17, 1941,⁷⁰⁴ which the prosecution overlooks in making such a statement, and all of them are corroborative, not conflicting.

223. As early as September 26, 1941, KIDO had recognized that the Imperial decision of September 6, 1941, should be reviewed.⁷⁰⁵ Again on October 9, 1941, he set forth in his diary that this decision seemed to him to be too outright and that it was not the conclusion of exhaustive discussion,⁷⁰⁶ and he discussed it thoroughly at the meeting of the Senior Statesmen on October 17, 1941.⁷⁰⁷ KIDO's objection was to the whole decision, not a part of it, as the prosecution claims.⁷⁰⁸ As shown in his November 1941 statement in referring to the decision of September 6, KIDO said:

"... I believe it will necessitate a complete reconsideration." The prosecution's guess that KIDO's

702. Ex. 1151, as Cor. Lang. Sec. tr. 11,141, 11,142
 703. Ex. 2250, tr. 16,198-16,211
 704. Aff. par. 216, tr. 31,005 - 31,018
 705. Aff. par. 196, tr. 30,956
 706. Ex. 1146, tr. 10,241 as cor. Lang. Sec. tr. 11,139
 707. Aff. par. 216, tr. 31,012
 708. Par. JJ-73, tr. 41,110 - 41,111

statement referring to the decision as "rather care-
less" ⁷¹⁰ meant only a part of it is thus made in dis-
regard of the evidence.

224. After expressing his opinion that he
thought it would be difficult for the KONOYE Cabinet to
handle the situation, TOJO further stated in his con-
versation with KIDO on October 16, 1941, that he thought
there would be no alternative but to petition a Prince
of the Blood to form a succeeding cabinet. KIDO asked
him whether that meant the army had decided to com-
pletely change its past policy and that a Prince of the
Blood would be petitioned to dispose of the aftermath,
as such a volte-face could not be effected by a subject.
TOJO replied in the negative, adding that a Prince of
the Blood would be petitioned to form a succeeding
cabinet for the purpose of deciding on the policy in
the future. KIDO objected to this and expressed that
such a cabinet should not be formed except when the
country had decided on an absolutely peaceful policy.
TOJO remained silent for some time and then abruptly
asked. "What will become of Japan then?" KIDO replied
that Japan might become a third or fourth rate power
if what he was doing was persisted in. KIDO believed
710. Par. JJ-73, tr. 41,110

1 at that time that if he talked to Prince KONOYE and if
2 Prince KONOYE exerted a little more effort, a way out
3 of the difficulties might be found, judging by his
4 interview with the War Minister. KIDO lost no time
5 in telephoning Prince KONOYE, but he had already
6 started having his cabinet colleagues tender their
7 resignations. The foregoing appears in KIDO's testi-
8 mony.⁷¹¹

9 225. KIDO consulted Prince KONOYE after the
10 latter had presented the resignation of his cabinet to
11 the Throne, and the full conversation appears in KIDO's
12 testimony.⁷¹² He told KONOYE that the decision of
13 September 6, 1941, was "cancer" and should be scrapped
14 so as to start afresh with a clean slate. For that
15 purpose someone fully acquainted with the whole situa-
16 tion should undertake the formation of the succeeding
17 cabinet. KIDO believed that one not acquainted with
18 the circumstances, which were all secret, would meet
19 with any army opposition and that there would be no
20 choice except to name Admiral OIKAWA or General TOJO.
21 They discussed the good and bad features of the appoint-
22 ment of either of them. Since TOJO had disagreed with
23 KONOYE it might be taken as a surrender if TOJO were
24

25 711. Aff. par. 209, tr. 30,983 - 30,984
712. Aff. par. 211, tr. 30,986

1 appointed. On the other hand, if OIKAWA was appointed,
2 because the navy did not want war the army might react
3 stronger. Thus if TOJO were selected and ordered to
4 disregard the decisions of the Imperial Conference of
5 September 6 he would be able to control the army, and
6 if he continued peaceful negotiations the effect on
7 America would be favorable. KONOYE agreed with KIDO
8 and stated that if the army got out of control no one
9 could tell what situation might be precipitated, par-
10 ticularly as the troops were now down south as far as
11 Southern French Indo-China. To avoid such an eventuality
12 TOJO, who had the army in hand, should accept the
13 appointment, especially judging from his remarks within
14 the past few days. He did not advocate waging war
15 immediately with America. As TOJO said, Japan would
16 not be able to wage war if the navy had no confidence.
17 As KONOYE also said, a way out of the difficulty might
18 be found if the Emperor granted a message to TOJO on
19 this point when His Majesty commanded him to form a
20 succeeding cabinet. The foregoing is fully set forth
21 in KIDO's affidavit⁷¹³ and substantiated in KONOYE's
22 ⁷¹⁴ Memoirs.
23
24

25 713. Aff. par. 211, tr. 30,986 - 30,987
714. Ex. 1148, tr. 10,269 - 10,271

226. On the night of October 16, 1941

R
e
i
c
h
e
r
s
&
G
r
e
e
n
b
e
r
g
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

KIDO gave serious and considerable thought to the problem⁷¹⁵ and reviewed his interview with TOJO in which he had noticed that the latter had become more thoughtful and it did not seem that he would necessarily advocate war with America if the Navy was opposed to it. KIDO stated that a change had apparently come over his way of thinking in the past few days. Another reason was TOJO's character since he was appointed Minister of War. TOJO had consistently respected Imperial wishes even stronger than that common to all Japanese soldiers. KIDO reasoned that if the Emperor issued a command to scrap the decision of the Imperial Conference of September 6 and review the situation on a fresh basis he had sincere confidence that TOJO would change his policy in pursuance of Imperial wishes as the backbone of his contention would be gone, that is, it would not be obligatory on him to execute the decision of the Imperial Conference. Furthermore, because of the development of the situation in the past few days it would be difficult to carry out the past policy. KIDO knew and understood that cynical criticism was rampant among foreign

715. Aff. par. 212, Tr. 30,988-9

1 residents in Japan at that time, that it was of no
 2 use to ask the Prime Minister or the Foreign
 3 Minister about Japan's foreign policy as it was only
 4 known at the General Staff of the Army. KIDO per-
 5 haps best summed up his thoughts when he said:

6 "In deference to those cynical criticisms,
 7 I thought that if the Army was made to conduct
 8 state affairs and if the Cabinet, formed by the Army
 9 itself, undertook to adjust the relations with
 10 America in dead earnest, American misgivings might
 11 be dispelled."⁷¹⁶

12 Although KIDO was vigorously cross-examined
 13 on the reasons for the recommendation of TOJO, his
 14 testimony was unshaken.⁷¹⁷

15 227. The next morning, October 17, KONOYE
 16 telephoned him, stating that it was his opinion
 17 that TOJO would be a better choice as Prime Minister
 18 than the Navy Minister, provided he was given an
 19 Imperial command to scrap the decision of September
 20 6 and use his best efforts to effect cooperation
 21 between the Army and Navy and strive for peace.⁷¹⁸
 22 KONOYE's Memoirs corroborated this.⁷¹⁹ As shown by

24 716. Aff. par. 212, Tr. 30,988-9

25 717. Tr. 31,596-31,600

718. Aff. par. 213, Tr. 30,990

719. Ex. 1148, Tr. 10,271

720
KIDO in his affidavit, the Senior Statesmen's
meeting was held that day, October 17, 1941, from
1:10 p.m. to 3:45. p.m.

228. At the risk of being repetitive,
we repeat -- in order to attach criminal responsi-
bility to KIDO for his recommendation of TOJO, it
is fundamental that the burden is on the prosecution
to show that KIDO did so with a criminal intent in
mind. There is absolutely no affirmative evidence
to which the prosecution can point to support its
burden. No affirmative statement of KIDO's, or
of any other witness, and no documents have been
introduced in evidence stating or indicating that
KIDO appointed TOJO for the purpose of commencing the
Pacific War. On the contrary the affirmative evidence
and the reasonable inferences to be dispassionately
drawn from all the evidence points unmistakably to
one conclusion -- KIDO recommended TOJO with the
sincere and honest intent that by so doing war
would be averted.

229. The affirmative evidence is perhaps
best demonstrated by the minutes of the meeting of
the Senior Statesmen of October 17, 1941. Before
discussing these minutes we should like to digress
720. Aff. par. 214, Tr. 30,990

for a moment. The prosecution failed to introduce
 1 the minutes of this conference in evidence and yet
 2 it is one of the two conferences for which the
 3 prosecution charges criminality against KIDO.⁷²¹
 4 Appendix E of the Indictment charges that KIDO was
 5 "... present at and concurred in the decisions
 6 taken ..." at the conference of October 17, 1941
 7 (ex-Premiers) "... which decision prepared for
 8 and led to unlawful war on 7/8 December 1941"⁷²² The
 9 prosecution cannot claim ignorance of the existence
 10 of the minutes of this conference because they are
 11 mentioned in KIDO's Diary of October 24, 1941⁷²³ and
 12 the evidence is that the prosecution had this diary
 13 since about December 16, 1945. It cannot claim
 14 negligence in failing to have had possession of such
 15 an important document because it introduced in evi-
 16 dence the minutes of the Senior Statesmen's confer-
 17 ences of July 17, 1940,⁷²⁴ July 17, 1941,⁷²⁵ July 18,
 18 1944⁷²⁶ and April 5, 1945.⁷²⁷ There is no evidence
 19 in the case that the prosecution did not have these
 20 minutes and no evidence of why they were not intro-
 21

721. Pros. Doc. 0003, Tr. 16,851; Par. JJ-86-87,
 23 Tr. 41,126

722. Indictment.

723. Aff. par. 215, Tr. 30,990

724. Ex. 532, Tr. 6240

725. Ex. 1117, Tr. 10,166

726. Ex. 1278, Tr. 11,377

727. Ex. 1282, Tr. 11,388

1 duced. The only reasonable inference is that the
2 prosecution knew that these minutes definitely
3 establish that neither KIDO nor any of the Senior
4 Statesmen had any criminal intent in recommending
5 TOJO. Let us now examine the minutes of this con-
6 ference of ex-premiers of October 17, 1941 and
7 ascertain what took place. The reputation and
8 high standing of the participants is important.
9 There were present besides KIDO, WAKATSUKI, HARA,
10 OKADA, ABE, KIYOURA, YONAI, HIROTA, and HAYASHI.

11 230. Thus there were only two Army men --
12 Generals ABE and HAYASHI, and two navy men -- Admir-
13 als YONAI and OKADA, present. There is no evidence
14 that KIDO saw, spoke to or exerted any influence on
15 these statesmen before the meeting or at the meet-
16 ing. There is no evidence and there can be no in-
17 ference that KIDO controlled or could have controlled
18 the thoughts, words or actions of these men. These
19 statesmen were not politically ambitious. They had
20 no reason to recommend TOJO with any ulterior purpose
21 in mind. Furthermore, there can be no claim by the
22 prosecution that there was any concealment of the
23 facts from these statesmen. A complete and lengthy
24 resume of events carefully prepared by Prince KONOYE,
25 not KIDO, was read to them as the first order of

728
business. In this statement Prince KONOYE clearly
and painstakingly pointed out the decision of the
Imperial Conference of September 6, 1941 which was
that if diplomacy should fail by early October the
government would make up its mind to go to war. He
set forth the divergent contentions of the Army and
the government on the likelihood of success of a
diplomatic settlement. The Army position was that
". . . there is no prospect of our contentions
being accepted . . ." 729 while the government felt
that if more time was given diplomacy might succeed.

231. Attention was drawn by Prince KONOYE
to the fact that the Supreme Command was urging the
government to go to war pursuant to the decision of
September 6, 1941. (TOJO was not in the Supreme
Command.) He further pointed out that the knotty
questions which were involved in the negotiations
with America were:

1. The question of the intention of withdrawal of troops from China.
2. The Tripartite Alliance.
3. Commercial non-discrimination in the Pacific Area.

728. Aff. par. 216, Tr. 30,992-31,004
729. Aff. par. 216, Tr. 30,992

1 He explained the position of the Army, the govern-
2 ment and the United States on the most difficult
3 of these questions, to wit, troops in China. The
4 views of the government and the Army on war was
5 set forth in detail; the final conclusion being
6 that the Army contended that the freezing of Japan-
7 ese assets which had been accomplished would eventu-
8 ally impoverish and paralyze Japan, while the
9 government believed that the China Incident should
10 be settled and Japan should husband her resources
11 through hardship and privation. He also explained
12 the Navy's position and its conclusion to leave the
13 decision of diplomacy or war entirely to the Prime
14 minister. He pointed out the strong opinion in
15 Navy circles that war should be avoided. In addi-
16 tion Prince KONOYE chronologically traced the diplo-
17 matic negotiations with America step by step from
18 April up to date. He concluded by again pointing
19 out the divergent views of the Army and the Govern-
20 ment toward the possibility of success of diplomatic
21 negotiations with America.
22

23 232. With this background the Senior
24 Statesmen then expressed their views. ⁷³⁰ WAKATSUKI,
25 HARA, OKADA and ABE opened the discussion by pointing
730. Aff. par. 216, Tr. 31,005

1 to the dangers of war due to the exhaustion of
2 resources, particularly oil. In response to a
3 question by Mr. KIYOURA as to why the government
4 should decide its attitude at once when the Ambassa-
5 dor abroad says there is a chance of success, KIDO
6 replied:

7 "As for that point, the Imperial Conference
8 fixed the date of decision in the first part of Oc-
9 tober. Therefore, there developed a divergence of
10 views between the Government and the Army, and I
11 think the Government could not help but be pushed
12 to the wall."⁷³¹

13 If KIDO had been militarily minded his answer would
14 have been framed to imply that the government was
15 obstructing the militarists. In replying to an ob-
16 servation by Mr. ABE on the same subject, KIDO
17 pointed out that KONOYE wanted to meet President
18 Roosevelt and decide policies on broad lines and
19 that "While America's final reply has not yet been
20 forthcoming, the date of the Imperial Conference is
21 fast approaching. That is the actual situation."⁷³²

22
23 233. The question was then raised as to
24 the intentions of the Imperial General Headquarters

25 731. Aff. par. 216, Tr. 31,007
732. Aff. par. 216, Tr. 31,008

1 and KIDO pointed out that with a question such as
2 risking Japan's national existence involved a per-
3 fect agreement of views between the Army and Navy
4 was essential. KIDO was opposed to the suggestion
5 that the Supreme Command should recommend the candi-
6 date for the succeeding Prime Minister. HAYASHI's
7 proposal that an Imperial Prince in the naval ser-
8 vice should be the next Prime Minister was opposed
9 by Admiral YONAI as he thought that practically it
10 may not work. KIDO also pointed out the impractic-
11 ability of appointing a Prince of the Blood, as he
12 did not think that an Imperial Prince should be
13 called upon to settle the differences between the
14 Army and Navy and that they should settle their dif-
15 ferences before he accepted the post. If he failed
16 to solve this knotty question, the Imperial Family
17 would come in for a strong denunciation from the
18 people.
19

20 234. WAKATSUKI then asked KIDO for his
21 views on a succeeding cabinet. KIDO stated his con-
22 clusion first, that he thought TOJO should be
23 Premier and set forth the reasons: That the Imperial
24 Decision of September 6 was a poisonous and ir-
25 radicable source of difficulty; that the Army knew
it was impossible to wage war with America without

1 the Navy's determination but the Army could not
 2 help but proceed in accordance with the Imperial
 3 decision of September 6. And that since real
 4 cooperation between the Army and Navy was not forth-
 5 coming the September 6th decision was hurriedly
 6 made. He thought that the most practical way to
 7 save the situation would be to command TOJO to form
 8 the cabinet and at the same time "order him to effect
 9 real cooperation between the Army and Navy and re-
 10 examine the decision of the Imperial Conference. ." ⁷³³
 11 TOJO was fully acquainted with the development of
 12 the situation and the difficulty had been keenly
 13 driven home to him. He further pointed out that if
 14 a general or admiral not in active service was com-
 15 manded to form a cabinet "there may be fear of an
 16 unexpected result, in case his formation of the new
 17 cabinet is restricted by a section of the public
 18 with the decision of the Imperial Conference." ⁷³⁴
 19 This clearly shows KIDO realized that a revolution
 20 might occur, if one who could not control the military
 21 was appointed. It also shows that KIDO believed a
 22 certain section ⁷³⁵ might restrict the formation of a
 23 cabinet by one not in control of the military.
 24

25 733. Aff. par. 216, Tr. 31,012 734. Ibid.
 735. Aff. par. 216, Tr. 31,013. Translation says
 "section of the public," which is not in Japanese
 original.

1 235. Mr. KIYOURA did not think the appointment
2 of Prince FUGASHIKUNI would be proper and believed
3 that some one representing the military authorities
4 should form a cabinet. WAKATSUKI suggested UGAKI
5 but pointed out that "... it would be embarrassing,
6 should the militarists be opposed to him as before." 736

7 KIDO pointed out that UGAKI was a powerful
8 candidate and an outstanding man possessing actual power
9 but that he had previously been unable to form a cabinet
10 due to military opposition and that if UGAKI was command-
11 ed by the Emperor to form a cabinet there may not be
12 such opposition to him but nevertheless there was not
13 an atmosphere in the Army which would extend support
14 to him. And KIDO concluded by significantly stating
15 "I am inclined to believe that it will be extremely
16 difficult for General UGAKI to restrain the militarists." 737

17 ABE also pointed out that it would be difficult for
18 UGAKI to control the situation.

19 236. KIDO also pointed out that the present
20 situation with respect to TOJO was different from that
21 of HATA under the YONAI Cabinet - meaning that HATA had
22 already resigned prior to the fall of the YONAI Cabinet
23 whereas TOJO had not resigned. There can be no question
24

25 736. Aff. par. 216, T. 31,013
737. Aff. par. 216, T. 31,014

1 but what KIDO was relying on the Navy to curb the Army
 2 because when OKADA stated: "In any case, the Army em-
 3 braces a vigorous opinion. The Lord Keeper of the Privy
 4 Seal says that the Army fires the rifles from the rear,
 5 but I am afraid that it may develop into a gun."⁷³⁸
 6 KIDO replied: "It cannot be said that there is no
 7 occasion for worry on that point, but in short, the
 8 question is how useful the Navy's strength will be."⁷³⁹
 9 (KIDO was obviously referring to the hope that the Navy
 10 would restrain the Army.)

11 237. KIDO also stated in answer to a question
 12 by Mr. YONAI: "An agreement of views between the Army
 13 and Navy and a re-examination of the decision of the
 14 Imperial Conference must be the foundation for saving
 15 the situation; it may be also a good idea to make the
 16 Navy Minister undertake the job, as he stands for
 17 prudence."⁷⁴⁰ However, this suggestion of KIDO's that
 18 the Navy Minister be appointed Prime Minister was reject-
 19 ed by the two representatives of the Navy at the Senior
 20 Statesmen's Conference as follows:

21 "Mr. OKADA: I think it will not be absolutely
 22 proper for the Navy to recommend a succeeding Prime
 23 Minister from among its leaders at this time.
 24

25 738. Aff. Par. 216, T. 31,016

739. Ibid.

740. Ibid.

1 "Mr. YONAI: (Was of the same opinion as Mr.
2 OKADA.)" 741

3 238. It was decided to recommend TOJO and have
4 him concurrently assume the portfolio of war. WAKATSUKI
5 was the only one who had suggested General UGAKI, and the
6 meeting adjourned with Mr. HARA saying: "The Lord
7 Keeper's plan cannot be said to be satisfactory, but as
8 there is no other good plan, we cannot but help proceed-
9 ing forward with it." 741-a In such a plight, can there
10 be any criticism of KIDO or the Senior Statesmen? Was
11 this a decision of a band of conspirators? If so, why
12 weren't WAKATSUKI, OKADA, ABE and YONAI, the remaining
13 living members, indicted?

14 239. As the Chief Prosecutor himself said
15 during the course of cross-examination of Admiral OKADA:

16 "Mr. President, I respectfully call this
17 Tribunal's attention, as Chief Prosecutor appointed under
18 this Charter, to the fact that the accused who are in the
19 dock are the people we believe are really responsible
20 for this war. If there had been anyone else, they would
21 have been in the dock, too." 741-b

22 240. On another occasion, in referring to YONAI,
23

24 741. Aff. par. 216, T. 31,016
25 741-a Aff. par. 216, T. 31,018
741-b T. 29,305

742
the following observation was made:

1 "The President: He is alive in Japan, I
2 understand, and if they thought he was guilty they would
3 charge him."

4 The innocence of the Senior Statesmen emphasizes KIDO's
5 innocence.

6 241. The Prosecution sets this conference forth
7 as one of the two KIDO attended at which a decision was
8 made preparing for and leading to the Pacific War. We
9 challenge the prosecution to point to a single statement
10 he made at this Conference, indicating in the slightest
11 way that he or any of the others recommended TOJO for
12 the purpose of preparing for or leading to the Pacific
13 War. The only conclusion possible is that he was
14 recommended for the opposite purpose. The prosecution
15 declines to analyze this conference in detail and points
16 to no statement by KIDO at it to support its claim. The
17 prosecution's only treatment of it is to try to becloud
18 the issue by pointing to unimportant and unfounded picayune
19 details concerning contemporary statements, which in no
20 way conflict with this conference or KIDO's affidavit.

21 242. The prosecution contends that UGAKI
22 ". . . was supported by WAKATSUKI and to some extent by
23 OKADA and ABE at the meeting. . ." 743 The minutes of
24
25

742. T. 25,162

743. Par. JJ-75, T. 41,114

the Senior Statesmen's Conference definitely show that
 1 ABE said "I think it may be very difficult for General
 2 UGAKI to control the situation under the prevailing
 3 circumstances." ⁷⁴⁴ Thus, not only did ABE oppose UGAKI,
 4 and although OKADA had expressed a thought that "...
 5 UGAKI may be a good candidate, if the military circles can
 6 be reconciled with him" ⁷⁴⁵ OKADA finally stated: "No, I
 7 have not necessarily recommended General UGAKI." ⁷⁴⁶ Even
 8 WAKATSUKI's endorsement of UGAKI was qualified by his
 9 statement that "... though it would be embarrassing,
 10 should the militarists be opposed to him as before." ⁷⁴⁷
 11 Furthermore, as pointed out by General ABE to this
 12 Tribunal, "There was no person against having General
 13 TOJO as Prime Minister absolutely - there was no absolute
 14 objection." ⁷⁴⁸

16 243. The prosecution's hindsight guess ⁷⁴⁹ set
 17 up General UGAKI as "... the only man who might per-
 18 haps have averted war altogether." UGAKI himself doubted
 19 this. ⁷⁵⁰ The prosecution, apparently finally realizing
 20 that UGAKI would never have been able to form a cabinet
 21 or control the military, retreated from its position and

- 23 744. T. 31,015
 24 745. T. 31,017
 25 746. T. 31,017
 747. T. 31,013
 748. T. 34,406 - 34,409
 749. Pros. Doc. 0003, T. 16,853
 750. T. 34,913

on cross-examination of KIDO tried to show that OIKAWA
 1 should have been appointed as Premier but KIDO pointed
 2 out that the two Navy Senior Statesmen were opposed to
 3 OIKAWA. The prosecution then dropped the subject.⁷⁵¹
 4 That both Navy Senior Statesmen OKADA and YONAI opposed
 5 OIKAWA appears in the resume of the Senior Statesmen's
 6 Conference,⁷⁵² and the prosecution does not make a third
 7 suggestion in summation. As mentioned before, KONOYE had
 8 preferred TOJO to OIKAWA.⁷⁵³

244. Contrary to the prosecution's assertion,
 10 there is no difference between the contemporary documents
 11 -- the complete record of the meeting of the Senior States-
 12 men;⁷⁵⁴ the brief resume of the important points thereof
 13 contained in KIDO's Diary,⁷⁵⁵ and KIDO's description in
 14 the article he wrote in November 1941.⁷⁵⁶ The prosecution
 15 bandies with words, apparently in the hope that the Tribu-
 16 nal will overlook the fact that these three contemporary
 17 documents definitely establish that TOJO was not recommend-
 18 ed by either KIDO or the Senior Statesmen for the purpose
 19 of going to war.
 20

245. The idea of KIDO and the Senior Statesmen
 22 to have a military leader assume the helm of state with a
 23

751. T. 31,600

752. Aff. par. 216, T. 31,016

753. Ex. 1148, T. 10,271

754. Aff. par. 216, T. 30,001 - 31,018

755. Ex. 1154, T. 10,201 as corr. Lang. Sec. T. 11,142

756. Ex. 2250, T. 16,198 - 16,211

strict control over the military was not a new one.
 1 MATSUDAIRA, Yasumasa testified that Mr. HIROTA had told
 2 him in July 1941: "that for the purpose of adjusting the
 3 eccentric way of the military there was no other way but
 4 to have military leaders occupy the responsible posts
 5 and assume the helm of state with a strict control over
 6 the military"⁷⁵⁷ and that Marquis MATSUDAIRA reported
 7 this to Marquis KIDO prior to October 17, 1941.⁷⁵⁸ The
 8 prosecution did not desire to cross-examine him.

10 246. Admiral SHIMADA also expressed the same
 11 sentiments when he said on cross-examination: "The
 12 purport of my meaning as set forth there in my affidavit
 13 is that in this connection, in order to bring about a
 14 settlement of the negotiations between Japan and the
 15 United States, it would be necessary first of all to
 16 effect a powerful control over the General Staff Office
 17 of the army. Unless that were done, it would be difficult."⁷⁵⁹

18 247. KIDO fully reported the result of the
 19 Senior Statesmen Conference to the Emperor and recommended
 20 TOJO to the Throne as the next Premier.⁷⁶⁰

22 248. In order to carry out the suggestion to
 23 disregard the Imperial Decision of September 6, 1941 and
 24 the suggestion that the Army and Navy cooperate closer,

25 757. T. 30,026, 30,027

758. Ibid.

759. T. 34,691

760. Aff. par. 218, T. 31,018 - 31,019

1 KIDO asked the Emperor that such instructions be given to
 2 TOJO and OIKAWA.⁷⁶¹ TOJO was then called to the palace
 3 and received Imperial instructions to form a new cabinet
 4 and was told, "At this juncture you will see to it that
 5 the cooperation between the army and the navy is made
 6 closer than ever."⁷⁶² OIKAWA was then called in audience
 7 and instructed by the Emperor that he, himself ". . .
 8 must see to it that the cooperation between the army and
 9 navy is made closer than ever."⁷⁶³ After retiring from
 10 the Imperial presence, KIDO, in accordance with instruc-
 11 tions from the Emperor, told both TOJO and OIKAWA:⁷⁶⁴

12 "I presume that you have just received Imperial
 13 words in regard to cooperation between the Army and the
 14 Navy. As regards the fundamental line of national
 15 policy, I am commanded to convey to you the Imperial
 16 desire that the careful considerations be taken by
 17 studying both the internal and the external situations
 18 more comprehensively and more profoundly than ever,
 19 regardless of the resolution of the September 6 Imperial
 20 Conference."

21 249. The prosecution claims that there are two
 22 different contemporary statements of the two communica-
 23

24 761. Ibid

762. Aff. par. 219, T. 31,021

25 763. Ibid.

764. Aff. par. 218, Tr. 31,019

tions of the Emperor and KIDO's own communication to
 1 TOJO and OIKAWA, ⁷⁶⁵ one in KIDO's Diary, ⁷⁶⁶ and as
 2 set forth by KIDO in the statement he made in November,
 3 1941. ⁷⁶⁷ In his diary KIDO set forth the exact words
 4 of the message which he gave to TOJO and OIKAWA. In
 5 his resume of November, 1941 he set forth the exact
 6 words of this message and, in addition, both instruc-
 7 tions that the Emperor had given TOJO and OIKAWA. In
 8 his affidavit he sets forth in full the three communica-
 9 tions. ⁷⁶⁸ There is no difference in the original
 10 Japanese of these communications. The original Japanese
 11 of all three communications contained in the November,
 12 1941 statement is the same as the original Japanese
 13 contained in KIDO's affidavit, (which are correct
 14 translations) and the same is true with respect to
 15 the other communication which KIDO delivered to TOJO
 16 and OIKAWA as set forth in his diary of October 17, 1941.
 17 The difference is not a difference of contemporary
 18 accounts, as the prosecution would have the Tribunal
 19 believe. It is a difference of the prosecution's
 20 translations.
 21
 22

765. Par. JJ-77, T. 41,117

766. Ex. 1154, T. 10,291-10,299 as corr. by
 Lang. Sec., T. 11,142

767. Ex. 2250, T. 16,210-16,211

768. Aff. Paras. 218 - 219, T. 31,018-19-20-21.

tions of the Emperor and KIDO's own communication to
 1 TOJO and OIKAWA,⁷⁶⁵ one in KIDO's Diary,⁷⁶⁶ and as
 2 set forth by KIDO in the statement he made in November,
 3 1941.⁷⁶⁷ In his diary KIDO set forth the exact words
 4 of the message which he gave to TOJO and OIKAWA. In
 5 his resume of November, 1941 he set forth the exact
 6 words of this message and, in addition, both instruc-
 7 tions that the Emperor had given TOJO and OIKAWA. In
 8 his affidavit he sets forth in full the three communica-
 9 tions.⁷⁶⁸ There is no difference in the original
 10 Japanese of these communications. The original Japanese
 11 of all three communications contained in the November,
 12 1941 statement is the same as the original Japanese
 13 contained in KIDO's affidavit, (which are correct
 14 translations) and the same is true with respect to
 15 the other communication which KIDO delivered to TOJO
 16 and OIKAWA as set forth in his diary of October 17, 1941.
 17 The difference is not a difference of contemporary
 18 accounts, as the prosecution would have the Tribunal
 19 believe. It is a difference of the prosecution's
 20 translations.
 21
 22

- 23 765. Par. JJ-77, T. 41,117
 24 766. Ex. 1154, T. 10,291-10,299 as corr. by
 25 767. Lang. Sec., T. 11,142
 768. Ex. 2250, T. 16,210-16,211
 Aff. Paras. 218 - 219, T. 31,018-19-20-21.

250. The accused TOGO has presented several
1 peeves against KIDO. Although KIDO was not previously
2 cross-examined by TOGO's counsel on any of these, TOGO
3 was cross-examined on all of these. For example, in his
4 direct testimony TOGO complained that the Foreign Minister
5 was ignored in the taking of serious decisions affecting
6 the national policy and cited the instance on October 17,
7 1941 when the Lord Keeper of the Privy Seal called in the
8 outgoing War and Navy Ministers but not the Foreign Min-
9 ister. Yet in the next paragraph he admits in substance
10 that he knew that when asked by TOJO on October 17, 1941
11 to assume the post of Foreign Minister. It is only reas-
12 onable to suppose that the Prime Minister would convey
13 the Emperor's orders to his new cabinet which he, in fact,
14 did. It is also obvious that the reason why the outgoing
15 War and Navy Ministers were given the instructions was
16 because of the Emperor's orders that there should be
17 close cooperation between the Army and Navy, and it was
18 these officials who had a say in the appointment of the
19 new War and Navy Ministers. Furthermore, KIDO was carry-
20 ing out the instructions of the Emperor in giving the
21 orders to the outgoing War and Navy Ministers. 769

24 Apparently TOGO relented from his peeve because when he
25 was asked about this criticism of KIDO on cross-examina-

ation, and it was pointed out to him the efforts of the
Emperor on the advice of KIDO to give those instructions,

TOGO stated: "I have no desire whatsoever to comment
or criticize the wishes expressed by the Emperor. 770

THE PRESIDENT: We will adjourn until half
past one.

(Whereupon, at 1200, a recess was taken.)

- - -

AFTERNOON SESSION

M
O
R
S
E
&
W
h
a
l
e
n

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: With the Tribunal's permission
the accused TOGO will be absent from the courtroom the
whole of the afternoon conferring with his counsel.

Mr. Logan.

MR. LOGAN: If the Tribunal please, I would
like to continue reading the summation of KIDO, page
212, paragraph 251.

Let us examine the statement of November 1941
in which KIDO stressed the difficulties which attended
his efforts to save the situation following the resig-
nation of the KONOYE Cabinet. ⁷⁷¹ These difficulties as
set forth therein were:

(1) Objectively regarded, there was no can-
didate for the premiership who could stand comparison
with Prince KONOYE.

(2) The real cause of the cabinet change
was the question of interpretation of the decision
of the Imperial Conference of September 6, 1941, infor-
mation on which was not released for publication.

771. Ex. 2250, T. 16, 199 as cor. by Language Section

1 (3) The developments of the situation called
2 for the repeal of the decision of the aforesaid Im-
3 perial Conference so as to start afresh with a clean
4 slate.

5 (4) The decision of the Imperial Conference
6 to the effect that it should be decided to wage war
7 with America unless it would definitely appear that
8 diplomatic negotiations with America would be success-
9 ful not later than the first part of October was tan-
10 tantamount to the transfer of the Imperial standard to
11 the military, and therefore it would be extremely dif-
12 ficult to wipe the slate clean and study the question
13 from a new angle.

14 (5) Consequently one who is to be commanded
15 by the Emperor to form a succeeding cabinet should be
16 able not only to control the Army fully but also to
17 effect harmony and cooperation between the Army and the
18 Navy and in full pursuance of Imperial wishes.

19 (6) One who would be able to fulfill those
20 conditions would not only be fully acquainted with the
21 above circumstances, but be able to reflect on them
22 leading to the present situation. Thus, an outsider
23 would not understand them or be able to oppose the
24 military, therefore defeating the purpose of the cab-
25 inet change.

1 252. Ambassador Grew knew of the elements
2 within the Army pressing for war. In recording his
3 conversation with Prince KONOYE on September 6, 1941
4 he set forth what Prince KONOYE told him as follows:

5 "He admitted that there are certain elements
6 within the armed forces who do not approve his
7 policies, but he voiced the conviction that since
8 he had the full support of the responsible
9 chiefs of the Army and Navy it would be possi-
10 ble for him to put down and control any opposi-
11 tion which might develop among these elements."⁷⁷²

12 253. From the foregoing it is quite apparent
13 that it is idle for the prosecution to say that KIDO
14 at that time did not have in mind a premier who would
15 be able to control the Army if the negotiations for
16 peace were successful. We also refer to the corrobor-
17 ating evidence on cross-examination of the witness
18 TOMIYOSHI.⁷⁷³

19 254. It is idle for the prosecution to con-
20 tend that no contemporary document sustains KIDO's
21 affidavit in which he states his opinion which was
22 shared by others, that UGAKI would not have been able
23 to form a cabinet for if he did there would have been
24 a revolution in Japan followed by war. KIDO's account
25

⁷⁷². T. 25,371

⁷⁷³. T. 35,533-7

774
written in November 1941 states:

1 "In other words, the man who was entrusted
2 with the Imperial order at this time, and formed
3 a Cabinet, must comply with the wishes of the
4 Emperor in assuming leadership of the military,
5 especially of the Army, and also in bringing
6 about the complete cooperation of the Army and
7 the Navy. The person who was able to meet these
8 conditions had to be a man who could sufficiently
9 comprehend the development of the situation up
10 to this time, and had sincerely reviewed the
11 circumstances which had brought about the pres-
12 ent situation. In this respect, I thought, that
13 a man who had been an outsider to date would not
14 only not be able fully to understand the above-
15 mentioned situation, but would most likely be
16 unable to resist the so-called 'Imperial Stan-
17 dard' and would inevitably destroy the signifi-
18 cance of the recent political change."
19
20

21 * * * *

22 "In the meantime, the argument to restrain
23 the Army and tide over the threatening crisis of
24 war against America and Britain by appointing
25 General UGAKI was considerably and strongly

774. Ex. 2250, as cor. by Language Section, T. 16,208

stressed, and there were demands directed to me from various quarters to heed this argument, but as for myself, I estimated it was unsuitable at this time, according to the aforementioned reasons. Consequently, I finally determined to recommend War Minister TOJO to the Throne. Being resolved to take over the whole responsibility upon myself, I submitted the recommendation to the Emperor."⁷⁷⁵

255. In view of this can the prosecution seriously contend that KIDO did not have in mind the fact that UGAKI would be unable to form a cabinet or if he did there would have been a revolution in Japan followed by war? It was well known to everyone that UGAKI was unable to control the Army. UGAKI indicated that himself before this Tribunal.⁷⁷⁶ He was retired at that time and was not familiar with the circumstances which had brought on the situation. Furthermore, the contemporary document of the Senior Statesmen Conferences⁷⁷⁷ definitely shows that UGAKI was considered by the Senior Statesmen and that they, too, knew that he would be unable to control the militarists. As a matter of fact, as shown KIDO specifically said at that

⁷⁷⁵. Ex. 2250 as cor. by Language Section, T. 16,211
⁷⁷⁶. T. 23,891
⁷⁷⁷. Aff. par. 216, T. 31,005-31,018

meeting:

1 "I am inclined to believe that it will be
2 extremely difficult for General UGAKI to restrain
3 the militarists."⁷⁷⁸

4 256. This is another example where the prose-
5 cution, lacking evidence that KIDO did anything wrong,
6 endeavors to confuse the issues by beclouding them.
7 What other interpretation could be put on the words
8 "controlling the militarists," than a prevention of a
9 revolution followed by war in the event peace negotia-
10 tions succeeded? The prosecution takes one position
11 in its summation against KIDO and another position in
12 its general summation. It adopts the defense position
13 on this matter in general summation when commenting on
14 the fact that the advisors of the Emperor were in mortal
15 fear of assassination. The prosecution says:

17 "They knew full well that in the event
18 that TOJO, the leader of these irresponsible
19 militarists, was not chosen to be the head of
20 the Japanese Government they faced a national
21 insurrection and even a coup d'etat."⁷⁷⁹

23 257. Now, just what did the words, "coopera-
24 tion between the Army and Navy" mean? Let us examine
25 the prosecution's interpretations, and then compare them

778. T. 31,014

779. Par. 18, Pros. Argument, T. 38,962

with the evidence. On January 24, 1947, the prosecution's position was that KIDO's words and the Emperor's words to OIKAWA and TOJO,

"... could only mean that they should appoint a Navy Minister who would do whatever TOJO told them. They appointed SHIMADA -- and he did."

Today, however, after it was affirmatively demonstrated that neither KIDO nor TOJO had anything whatsoever to do with the appointment of Navy Minister SHIMADA, now, chameleon-like, the position changes. The prosecution now says with respect to the instructions to TOJO and OIKAWA:

"The whole thing in our submission plainly means no more than this -- 'before you decide on war be sure that both the Army and the Navy are agreed that we shall win.'"

258. Thus, although on two separate occasions it contended that the instructions could mean only one thing, the prosecution sets forth two different things they could mean:

(1) A Navy Minister who would do TOJO's bidding;

(2) Before decision on war, assurance must

780. Pros. Doc. 0003, P. 49, T. 16,853

781. Par. JJ-77, T. 41,118

1 with the evidence. On January 24, 1947, the prosecu-
2 tion's position was that KIDO's words and the Emperor's
3 words to OIKAWA and TOJO,

4 " . . . could only mean that they should
5 appoint a Navy Minister who would do whatever
6 TOJO told them. They appointed SHIMADA -- and
7 he did."⁷⁸⁰

8 Today, however, after it was affirmatively demonstrated
9 that neither KIDO nor TOJO had anything whatsoever to
10 do with the appointment of Navy Minister SHIMADA, now,
11 chameleon-like, the position changes. The prosecution
12 now says with respect to the instructions to TOJO and
13 OIKAWA:

14 "The whole thing in our submission plainly
15 means no more than this -- 'before you decide
16 on war be sure that both the Army and the Navy
17 are agreed that we shall win.'⁷⁸¹"

18 258. Thus, although on two separate occasions
19 it contended that the instructions could mean only one
20 thing, the prosecution sets forth two different things
21 they could mean:

22 (1) A Navy Minister who would do TOJO's
23 bidding;

24 (2) Before decision on war, assurance must

25 780. Pros. Doc. 0003, P. 49, T. 16,853

781. Par. JJ-77, T. 41,118

1 be made that the Army and Navy are agreed that Japan
2 shall win.

3 Let us give the prosecution the benefit of the doubt
4 and assume that it meant to say that its guess is that
5 the instructions meant either or both. The evidence,
6 as opposed to the prosecution's guess, or guesses, shows
7 how wrong is the prosecution.

8 259. Let us now examine the evidence which
9 the prosecution overlooked. First, with respect to
10 SHIMADA. The evidence is overwhelming that KIDO had
11 absolutely nothing to do with the appointment of SHIMADA.
12 Admiral OIKAWA, who was the recipient of the instruc-
13 tions from KIDO and the Emperor, testified that neither
14 KIDO nor anyone on his behalf ever spoke to him and
15 suggested that SHIMADA be appointed Navy Minister.⁷⁸²
16 He also testified that SHIMADA was not appointed Navy
17 Minister at the request of General TOJO or anyone else
18 on his behalf. He stated that he himself "... felt
19 that SHIMADA would be the most appropriate person to
20 take charge of the Navy Ministry and to help solve the
21 situation, and did my utmost to persuade SHIMADA to
22 accept the post. Other Navy leaders also felt the same
23 way I did."⁷⁸³ He denied emphatically that anyone outside
24 of the Navy Ministry or naval circles brought any
25

782. T. 33,344

783. T. 33,346

1 pressure whatsoever to bear with respect to the appoint-
2 ment of Admiral SHIMADA as Navy Minister. ⁷⁸⁴ Admiral
3 OIKAWA also testified: ⁷⁸⁵

4 "From the evening of October 16, 1941 until
5 I arose the following morning I carefully delib-
6 erated as to whom to recommend as Navy Minister.
7 Around 11 a.m. that morning I went to see Prince
8 FUSHIMI and told him that I considered SHIMADA
9 as my logical successor and he agreed that
10 SHIMADA was the best choice of available candi-
11 dates. My opinion was definitely formulated on
12 the morning of October 17, 1941 and before I
13 knew TOJO was to assume the premiership. There-
14 fore, there is absolutely no truth to the allega-
15 tion that Admiral SHIMADA was appointed because
16 TOJO wanted him to be. To my knowledge Admiral
17 SHIMADA and TOJO were not even acquainted at that
18 time."

19 260. In his direct testimony Admiral SHIMADA
20 said:

21 "He (OIKAWA) then told me he would like to
22 recommend me as his successor for the Navy Minis-
23 tership under a new cabinet which was being formed.
24 He said that he had carefully considered all of
25

784. T. 33,347

785. T. 34,572

the available high-ranking naval officers and
 1 had come to the conclusion that I was best quali-
 2 fied for the post.⁷⁸⁶

3 He, too, clearly stated that no pressure was
 4 brought by KIDO or anyone else to have him appointed
 5 to do the bidding of TOJO.⁷⁸⁷

6 261. TOJO, the other recipient of the instruc-
 7 tions, testified at no time did KIDO either directly
 8 or indirectly, in writing or orally, by any deed of his
 9 or any act, have anything whatsoever to do with the
 10 appointment of SHIMADA as Navy Minister.⁷⁸⁸ To show the
 11 lack of importance of KIDO and that he had no influence
 12 over the military the Tribunal's attention is directed
 13 to the fact that TOJO even went further in saying,
 14 "Even if he did, I would not have permitted him to do
 15 so."⁷⁸⁹ This is further demonstrated by the testimony
 16 of Admiral SHIMADA. After testifying that he only came
 17 to know KIDO after he had been appointed Navy Minister
 18 the record reveals the following questions and answers:⁷⁹⁰

19 "Q Did KIDO at any time prior to your acceptance
 20 of the post of Navy Minister ever speak with you and
 21 ask you to accept the post?

22 "A Preposterous. It is absolutely not the case.

23 "Q Did he ever send anyone to you and ask you

24 786. T. 34,650

789. Ibid.

787. T. 34,686

790. T. 34,686

788. T. 36,520

on his behalf to accept the position as Navy Minister?

1 "A If any messenger like that came I would just
2 bark at him and kick him out."

3 262. In guessing that SHIMADA was appointed
4 to do TOJO's bidding, the prosecution ignores the fact
5 that NAGANO, who was Chief of the Navy General Staff
6 in the KONOYE Cabinet, continued in that powerful of-
7 fice in the TOJO Cabinet. It was NAGANO who, on July
8 31, 1941, told the Emperor in referring to a war with
9 America, "It was even doubtful whether or not we would
10 even win . . ."⁷⁹¹

11 263. Now let us examine the evidence to see
12 if the prosecution's second guess is correct. KIDO
13 says:
14

15 ". . . on the part of the Army it was to
16 refrain from acting as it pleased in defiance
17 of the intentions of the Navy which was anxious
18 to avoid war with America and on the part of the
19 Navy to manifest its intentions clearly so as to
20 seek a peaceful solution of the outstanding
21 question between Japan and America."⁷⁹²

22 This was the thought behind his statement
23 expressed at the Senior Statesmen Conference.⁷⁹³

24 791. Ex. 1125, T. 10,186 as cor. by Language Section,
25 T. 10,667

792. Aff. par. 223, T. 31,025

793. Aff. par. 223, T. 31,024-31,025

264. KIDO's statement is corroborated by
others. Admiral OIKAWA testified:⁷⁹⁴

"I interpreted the Emperor's words to mean that both the Army and the Navy should reject all obstacles which hitherto had presented themselves and which might tend to make impossible the further continuance of Japan-American negotiations, and from a new and impartial standpoint confer with each other for the purpose of striving to solve the situation peacefully. This was because the Emperor had always earnestly desired for the peaceful solution of the situation."

TOJO confirmed OIKAWA's interpretation when
cross-examined and said,⁷⁹⁵

"But I am convinced that there can be no lie in what OIKAWA has said before this Tribunal on oath,"

adding,

"I was well aware indeed of the Emperor's state of mind, namely, that the Emperor was extremely desirous of effecting a peaceful solution of the situation, and I am sure that

794. T. 33,345
795. T. 36,506

1 my interpretation of the Emperor's state of
2 mind was correct."⁷⁹⁶

3 When asked if he interpreted the Emperor's
4 words to mean that the Army should blindly follow the
5 Navy or that the Navy should blindly follow the Army
6 as suggested by the prosecution,⁷⁹⁷ TOJO replied,⁷⁹⁸

7 "Even as a matter of common sense such a
8 proposition is inconceivable, and it is equally
9 inconceivable that the Emperor should think of
10 such a stupid thing."

11 There is no evidence in the case refuting this
12 testimony. Both of the prosecution's guesses are con-
13 trary to the evidence.

14
15
16
17
18
19
20
21
22
23 796. T. 36,507
24 797. T. 36,505
25 798. Ibid.

265. Once again in summing up the facts
 1 surrounding the recommendations of TOJO and the instruc-
 2 tions to him that the September 6th Decision should be
 3 re-examined and that there should be cooperation be-
 4 tween the Army and Navy, the prosecution says, "As
 5 always there was no reference to the kind of agreement
 6 to be reached or policy to be adopted."⁷⁹⁹ If this
 7 is the most that the prosecution can get out of this
 8 evidence we submit that the prosecution admits that
 9 it has failed to sustain its burden of proof that KIDO
 10 conspired to commit any of the acts set forth in the
 11 Indictment, because it charges that he conspired to
 12 commit the acts set forth therein, not "some kind of
 13 an agreement or policy."⁸⁰⁰

266. The prosecution's question⁸⁰⁰ on KIDO's
 16 belief that if the Emperor told TOJO to do something
 17 he would faithfully obey is why did KIDO not advise
 18 the Emperor to order TOJO not to make war. KIDO's
 19 belief that TOJO would faithfully obey the Emperor
 20 is corroborated by the testimony of MUTO.⁸⁰¹ The
 21 Imperial Command given to TOJO and OIKAWA and KIDO's
 22 statement to them that close cooperation should be had
 23 between the Navy and Army, and that the decision of

25 (799. Par. JJ-75, Tr. 41,116
 800. Pros Arg. JJ-77, Tr. 41,116
 801. Tr. 33,165)

1 September 6th should be reviewed can be construed as
2 nothing else but the Emperor's order to TOJO and
3 OIKAWA not to plunge Japan into war.

4 267. Although in KIDO's summation the prosecu-
5 tion refuses to accept KIDO's interpretation of these
6 orders, in its individual summation against TOJO it
7 does accept them and claims that TOJO did not examine
8 the negotiations from a clean slate basis and instead
9 "He, in fact, violated a solemn trust imposed upon
10 him by the Emperor, when he was invested with the
11 highest government position in the Empire***." 802
12 Compare this with the two guesses above mentioned.

13 268. The contention of the prosecution is
14 that KIDO's recitation of KONOYE's message to him on
15 the morning of October 17, 1941 wherein KONOYE approved
16 of the recommendation of TOJO containing the provision
17 that he strive for peace does not appear in any con-
18 temporary document. Apparently it has overlooked the
19 fact that KONOYE's own memoirs contained words to the
20 same effect. 803 Furthermore, as shown above, the
21 prosecution itself has construed the messages of the
22 Emperor and KIDO to OIKAWA and to TOJO as "striving for
23 peace" in its individual summation against TOJO. In
24 (802. Pros. Arg. XX-62, Tr. 41,999
25 803. Ex. 1148, Tr. 10,271)

1 view of this, the prosecution's question of why KIDO
2 delivered these messages instead of the Emperor is
3 of no moment,⁸⁰⁴ and the question with respect to what
4 inference OIKAWA could be expected to draw was answered
5 by OIKAWA himself as quoted above.⁸⁰⁵

6 269. The corroborative evidence is over-
7 whelming that TOJO was recommended as Prime Minister
8 for purposes of peace and not war.⁸⁰⁶

9 270. KAYA testified⁸⁰⁶ to the conversation
10 he had with TOJO before he accepted the position as
11 Finance Minister. KAYA stated TOJO replied in the
12 negative to his query as to whether he, TOJO, was
13 decided on waging war against the United States. TOJO
14 definitely stated that he intended to continue with
15 the Japanese-American negotiations and exert his
16 efforts toward an amicable settlement. He also told
17 KAYA he would work toward a closer relationship between
18 the Supreme Command and the Cabinet. KAYA was relieved
19 to learn of TOJO's intentions. YUKI, Toyotaro testified
20 that he had a conversation with KAYA which confirms
21 KAYA's statement above.⁸⁰⁷ YUKI was not cross-examined.
22 KOBAYASHI, Seizo also testified that he talked with
23 KAYA and KAYA told him that TOJO had informed him that
24

25 (804. Par. JJ-77, Tr. 41,117
805. Infra. P. 220
806. Tr. 30,648-30,649
807. Tr. 30,557)

1 the United States-Japanese negotiations would be
 2 continued and that he was resolved to do his best to
 3 arrive at an understanding. ⁸⁰⁸ KOBAYASHI was not
 4 cross-examined. This evidence was also corroborated
 5 by GOTO, Ryunosuke. ⁸⁰⁹ Again no cross-examination.

6 271. TOGO testified that before he accented
 7 the position as Foreign Minister he had a conversation
 8 with TOJO in which after hearing TOJO's explanation
 9 as to the downfall of the KONOYE Cabinet he said he
 10 would agree to enter the cabinet only if the army con-
 11 sented to make considerable allowances in reviewing
 12 the question of troop stationing and re-examination
 13 of the other questions in the Japanese negotiations.
 14 TOJO assured him that reconsideration might be under-
 15 taken. ⁸¹⁰ SUZUKI, Tomin, an editorial writer from
 16 Yomiuri Shimbun, a prosecution witness, testified on
 17 cross-examination as to TOJO's intentions for peace
 18 when he offered the Foreign Ministership to TOGO. ⁸¹¹
 19 TOGO's testimony on this point was also corroborated
 20 by TOMIYOSHI. ⁸¹²

21 272. The accused MUTO testified ⁸¹³ that
 22 TOJO did not even dream that he would receive an order
 23

24 (808. Tr. 30,603
 25 809. Tr. 30,609
 810. Tr. 35,671-35,672
 811. Tr. 1235
 812. Tr. 35,524
 813. Tr. 33,167)

1 to form a cabinet. He stated that when TOJO was ordered
2 to appear at the Palace, TOJO left his office feeling
3 that because of the resignation en bloc of the Third
4 KONOYE Cabinet he was to be berated by the Emperor
5 and that he would be asked various questions by the
6 Emperor and he went there prepared for this. The accused
7 MUTO also testified that at the first Liaison Confer-
8 ence after he formed his Cabinet, TOJO said in effect,
9 "that the Liaison Conference, standing on a new
10 position and without being bound by the Imperial Con-
11 ference Decision of September 6th, will study ways
12 and means of bringing about a settlement of the pending
13 issues between Japan and the United States." ⁸¹⁴ This
14 was confirmed by the witness YAMAMOTO, Kumaichi when
15 he said:

16 "This intention of the new government
17 was confirmed by Premier TOJO, who in the
18 opening address at the first meeting of
19 the Liaison Conference after the formation
20 of his ministry said that the policy of the
21 new cabinet would be to reconsider the problem
22 without being bound by the decision of 6
23 September, and asked the agreement thereto
24 of the representatives of the High Command,
25

(814. Tr. 33,172)

which was given." ⁸¹⁵

1 273. OIKAWA testified ⁸¹⁶ that when he with-
2 drew from the audience with the Emperor on the evening
3 of October 17 he and General TOJO were seated alone
4 in the waiting room and that he had a conversation
5 with General TOJO, the general outline of which was
6 the firmness of TOJO's resolution to throw away all
7 obstacles which had been obstructing their path in the
8 past, to wipe the slate clean and to start out afresh
9 in line with the words which he had just received
10 from the Emperor. OIKAWA also stated that he received
11 an impression that TOJO did have a strong resolve to
12 carry that out. OIKAWA also testified ⁸¹⁷ on cross-
13 examination that the decision of wiping the slate
14 clean did not mean that an early decision for war would
15 be made but it meant that the decision of the Imperial
16 Conference of September 6th would be scrapped, and
17 that viewing the international situation anew a new
18 approach would be made to the problem. He significantly
19 stated, "At that time no one had any idea of waging
20 a war within the matter of a few weeks simply by the
21 fact of wiping the slate clean." ⁸¹⁸

- 22
23
24 (815. Tr. 25,921
816. Tr. 33,345-33,346
817. Tr. 34,591-34,592
25 818. Ibid.

which was given."⁸¹⁵

1 273. OIKAWA testified⁸¹⁶ that when he with-
2 drew from the audience with the Emperor on the evening
3 of October 17 he and General TOJO were seated alone
4 in the waiting room and that he had a conversation
5 with General TOJO, the general outline of which was
6 the firmness of TOJO's resolution to throw away all
7 obstacles which had been obstructing their path in the
8 past, to wipe the slate clean and to start out afresh
9 in line with the words which he had just received
10 from the Emperor. OIKAWA also stated that he received
11 an impression that TOJO did have a strong resolve to
12 carry that out. OIKAWA also testified⁸¹⁷ on cross-
13 examination that the decision of wiping the slate
14 clean did not mean that an early decision for war would
15 be made but it meant that the decision of the Imperial
16 Conference of September 6th would be scrapped, and
17 that viewing the international situation anew a new
18 approach would be made to the problem. He significantly
19 stated, "At that time no one had any idea of waging
20 a war within the matter of a few weeks simply by the
21 fact of wiping the slate clean."⁸¹⁸

23 (815. Tr. 25,921

24 816. Tr. 33,345-33,346

25 817. Tr. 34,591-34,592

818. Ibid.

274. The accused SUZUKI testified that he really believed that General TOJO would be able to check the war faction. At that time General TOJO did not necessarily seem to advocate war on his own but that there seemed to be some hidden power pushing this war agitation.

6 275. SHIMADA also testified of a conversation
7 he had with TOJO of his intentions to start from
8 scratch with respect to Japanese-United States negoti-
9 ations. SHIMADA did not have the impression that
10 he was joining a war cabinet. 820

276. TOJO admitted on cross-examination that shortly after he received the Imperial Mandate to form a cabinet he told his secretary Colonel AKAMATSU that he was not the TOJO of former times, but that since he was appointed to the Premiership he would do his best to realize the Emperor's wishes. As was said by the witness SHIBA "The TOJO Cabinet then decided to scrap all previous understandings and start afresh****".

20 277. Since the prosecution with the combined
21 acumen of eleven nations at hand, almost seven years
22 after the event and after two years of intensive study
23 of the conditions, is baffled in its efforts to

25 (819. Tr. 35,808
820. Tr. 34,654-34,655
821. Tr. 36,507
822. Tr. 33,320-321)

1 and will be composed primarily of military
2 men. The new Cabinet may even appear to
3 be extremist to persons unacquainted with
4 the set-up of the various groups within
5 the Japanese Army and other factions
6 having influence in the Government. However,
7 Prince KONOYE entertains the hope that
8 the Ambassador will stress to the Govern-
9 ment of the United States that too great
10 importance should not be given to the
11 outward appearance of the new Cabinet.
12 Prince KONOYE also desires the Ambassador
13 to understand that he would not have tendered
14 his resignation at this moment without hav-
15 ing convinced himself that the succeeding
16 Prime Minister would be equally desirous
17 of adjusting Japanese-American relations." 823
18
19
20
21
22
23

24 (823. Tr. 25,858-25,859)
25

1 determine a person more suitable than TOJO how is it
2 in any position to criticize KIDO, let alone ask for
3 his life.

4 278. We have no desire to criticize the
5 prosecution for being baffled because it required a
6 miracle at that time to appoint some one who would be
7 able to control the militarists and continue the nego-
8 tiations with America. This was so pointedly recorded
9 by Counselor Dooman of the American Embassy in Japan
10 in a memorandum dated October 17, 1941:

11 "Prince KONOYE about a week ago had de-
12 cided to resign in view of the internal situ-
13 ation in Japan. At that time it appeared
14 inevitable that the succeeding cabinet would
15 be one of an extremist nature but Prince
16 KONOYE through intensive effort and 'by a
17 miracle' had in recent days been successful
18 in ensuring that the government to succeed him
19 would be composed of persons who did not subscribe
20 to the principle that the conversations with the
21 United States should be broken off.

22 "No Japanese civilian statesman will
23 undertake the task in which Prince KONOYE
24 has failed and consequently the succeeding
25 cabinet must be headed by an Army officer

1 and will be composed primarily of military
2 men. The new Cabinet may even appear to
3 be extremist to persons unacquainted with
4 the set-up of the various groups within
5 the Japanese Army and other factions
6 having influence in the Government. However,
7 Prince KONOYE entertains the hope that
8 the Ambassador will stress to the Govern-
9 ment of the United States that too great
10 importance should not be given to the
11 outward appearance of the new Cabinet.
12 Prince KONOYE also desires the Ambassador
13 to understand that he would not have tendered
14 his resignation at this moment without hav-
15 ing convinced himself that the succeeding
16 Prime Minister would be equally desirous
17 of adjusting Japanese-American relations." 823
18
19
20
21
22
23

24 (823. Tr. 25,858-25,859)
25

279. As shown one may read KIDO's November 1941 historical portrayal of the events leading up to the appointment of TOJO, and all the other contemporary documents, and oral testimony in vain for any indication that TOJO was appointed for the purpose of waging war with America. After consultation with the Senior Statesmen KIDO personally assumed the responsibility to the Emperor of making the recommendation and it would be far fetched to argue that any criminal responsibility attached from such assumption. There can be no question but that conditions in Japan were exceedingly critical at that time with the Allied pressure from the outside, both economic and military, and the younger militarists in Japan pressing for war and the navy undecided. It is no wonder that when KIDO reported to the Emperor on October 20, 1941, that "... one mistaken step taken in the present cabinet change might have inadvertently plunged us into war" and that the appointment of TOJO was in his belief "... the only way of giving a new turn to the situation. ...". His Majesty replied "He who will not go into the tiger's den will not get the tiger cub." The Emperor too realized "nothing ventured, nothing gained." The

824. Ex. 1156, T. 10295; 825. Ibid. 826. Ibid.
827. Aff. par. 226, T. 31027.

1 question might well be asked -- How long would a
 2 person like KIDO have lasted in the Nazi Regime?

3 XII.

4 (G) Events Prior to Pearl Harbor.

5 280. There is an abundance of evidence in
 6 this case concerning the effort TOJO and his cabinet
 7 made to wipe the slate clean and effect peace between
 8 the United States and Japan. KIDO of course had nothing
 9 to do with these steps so we will mention them here
 10 only briefly. Among other things TOJO undertook an
 11 exhaustive study at the Liaison Conferences during
 12 the latter part of October of the possibilities of
 13 effecting peace negotiations with America; ^{828.} the
 14 preparation and submission of proposals A and B; ⁸²⁹
 15 the dispatch of KURUSU to America; ⁸³⁰ and TOJO even
 16 went so far as to call, upon approval of the Emperor,
 17 a meeting of the Military Councillors. This was the
 18 first time it was called since the establishment of
 19 the Military Councillor system in 1903. ^{831.} TOJO
 20 testified to KIDO's elation upon hearing about the
 21 decision to withdraw the troops from South Indo
 22 China. ^{832.} The situation gradually changed so that it

23
 24 828. T. 36316; 829. T. 36326; 830. T. 36347.
 25 831. T. 36329 et seq; 832. T. 36519 - 36520.

1 became necessary for the government to prepare for
 2 war and for peace,^{833.} as consideration had to be
 3 paid to the worst eventuality of a rupture in negotia-
 4 tions.

5 281. The Imperial Conference of November
 6 5 came to pass at which Japan's policy towards the
 7 United States, England and the Netherlands was decided
 8 according to the principles studied by the Liaison
 9 Conferences. KIDO of course had no part in this:⁸³⁴

10 At that time a very ugly transformation came over the
 11 country.^{835.} The guard around KIDO's house was
 12 increased from 10 to 15 policemen in the day time and
 13 at night was increased from 25 to 35. He had to follow
 14 a different route every day in driving to and from his
 15 office.^{836.} The reason for this is quite obvious.

16 The testimony is uncontradicted that KIDO was regarded
 17 as pro-British and pro-American. We need refer the
 18 Tribunal only to the testimony of former German
 19 Ambassador Ott and the accused MATSUI. Ott stated:^{837.}

20 "The attitude of the Reich Government toward
 21 Marquis KIDO was one of distrust. He was considered

22 833. Aff. par. 230, T. 31030.
 23 834. Aff. par. 231, T. 31031.
 24 835. Aff. par. 232, T. 31032.
 25 836. Ibid.
 837. T. 34908.

No wonder KIDO never received a decoration from the German Government. MATSUI's statement on cross-examination was as follows:

"... But on the whole, from my own observation, I felt that the Lord Keeper was somewhat more pro-British and pro-American than such people as myself. But at the same time he was a patriotic Japanese."

282. KIDO testified the solidarity of young military and naval officers became tightened with the result that an atmosphere was created in the fighting services themselves opposing the policy of the leaders of the army and navy for the adjustment of relations between Japan and America. 839. Fretful impatience was the order of the day. On November 19, 1941 KIDO had an audience with the Emperor. 840. KIDO counseled the Emperor at this time to strongly deprecate entering

838. T. 33920.

839. Aff. par. 233, T. 31032.

840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

283. The prosecution neither condemns nor commends KIDO for recommending that a meeting with the Senior Statesmen be held. It just misstates the procedure never happened. 843. The reason is obvious.

KIDO thought as a last resort the Senior Statesmen might be able to avert the crisis and avoid war. As shown in KIDO's Diary of November 26, 1941 844. the

841. Aff. par. 233, T. 31033.

842. Ex. 1181, T. 11143.

843. Par. JJ-80, T. 41119.

844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional excerpts Aff. par. 233, T. 31034 - 31035.

1 as belonging to the group which did not favor the
 2 improvement of the Japanese-German relations, primarily
 3 under the leadership of the Minister of the Imperial
 4 Household, MATSUDAIRA. I considered KIDO in line with
 5 MATSUDAIRA's views, and this feeling was shared in
 6 Berlin."

7 No wonder KIDO never received a decoration
 8 from the German Government. MATSUI's statement on
 9 cross-examination was as follows: ^{838.}

10 ". . . But on the whole, from my own obser-
 11 vation, I felt that the Lord Keeper was somewhat more
 12 pro-British and pro-American than such people as
 13 myself. But at the same time he was a patriotic
 14 Japanese."

15 282. KIDO testified the solidarity of young
 16 military and naval officers became tightened with the
 17 result that an atmosphere was created in the fighting
 18 services themselves opposing the policy of the leaders
 19 of the army and navy for the adjustment of relations
 20 between Japan and America. ^{839.}

21 Fretful impatience was
 22 the order of the day. On November 19, 1941 KIDO had
 23 an audience with the Emperor. ^{840.} KIDO counseled the
 24 Emperor at this time to strongly deprecate entering

25 838. T. 33920.

839. Aff. par. 233, T. 31032.

840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

1 into a state of war with the passing of the end of
 2 November just as if it were a matter of routine business
 3 and instead that the situation should be handled with
 4 a most cautious attitude as it was conceived that the
 5 negotiations with America by the end of November might
 6 be in one of various states.^{841.} As the exhibit
 7 clearly shows, he further pointed out that by rushing
 8 into war, influence on the unification of public opinion
 9 would have an undesirable effect in the future and he
 10 advised the Emperor'. . . when the Premier solicits
 11 His Majesty's final decision, if circumstances require,
 12 the Premier should be ordered to hold the council in
 13 the Imperial presence with the participation therein
 14 of all the Senior Statesmen."^{842.}

15 283. The prosecution neither condemns nor
 16 commends KIDO for recommending that a meeting with
 17 the Senior Statesmen be held. It just misstates the
 18 procedure never happened.^{843.} The reason is obvious.
 19 KIDO thought as a last resort the Senior Statesmen
 20 might be able to avert the crisis and avoid war. As
 21 shown in KIDO's Diary of November 26, 1941^{844.} the

22 841. Aff. par. 233, T. 31033.

23 842. Ex. 1181, T. 11143.

24 843. Par. JJ-80, T. 41119.

25 844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional
 excerpts Aff. par. 233, T. 31034 - 31035.

1 Emperor approved of the conference with the Senior
2 Statesmen" . . . which should be convened to have
3 broader and more complete discussions on the matter."
4 In reply to the Emperor's statement on November 26, 1941
5 regarding the outlook of the Japanese-American talks
6 and fears that the worst might come to the worse, KIDO
7 replied:

8 "Once the final decision is made this time
9 it would truly be the last and irretrievably final
10 one. Thus if there should be any doubt or any better
11 idea to surmount the difficulties in your Majesty's
12 mind, I pray that your Majesty be pleased to elucidate
13 the same without the least reserve and appropriate
14 steps which your Majesty might not repent of afterwards.
15 I therefore pray that Your Majesty command the Premier
16 without reserve."

17 284. We submit that this speaks for itself.
18 The usual guess, this time **extremely** brief, of the
19 prosecution's interpretation of both of these diary
20 entries of November 19, 1941 and November 26, 1941 is
21 grossly distorted. ^{845.} The proper interpretation is
22 just the opposite of the prosecution's and clearly
23 demonstrates KIDO's innocence of having a criminal
24 mind. There was no cross-examination of KIDO on these
25 845. Part JJ-78, T. 41778.

1 entries or his testimony regarding them, and therefore
 2 was not contested. On its face the diary entry of
 3 November 26, 1941 clearly shows KIDO's prayer that
 4 the Premier be commanded without reserve. It speaks
 5 for itself.

6 285. Upon receipt of Secretary Hull's note
 7 of November 26, 1941 it was felt that the American
 8 proposal was so strong as to be entirely beyond the
 9 pale of the contingencies which were anticipated by
 10 KIDO.^{846.} The government said that the Hull note was
 11 tantamount to an ultimatum.^{847.} The accused KAYA
 12 said: "It was a big blow to all."^{848.}

13 286. On the morning of November 27, 1941,
 14 a telegram from NOMURA and KURUSU dated November 26,
 15 1941 was received in the Foreign Ministry. In it
 16 substantially it was suggested that if conditions
 17 do not change negotiations must be given up by them
 18 and that they were humiliated at the lack of influence
 19 and in this case the only way to bridge the difficulty
 20 was to let President Roosevelt cable the Emperor and
 21 ask the Emperor to answer.^{849.} This request was
 22 conditioned on obtaining the permission from the Foreign

23 846. Ex. 1181, as cor. Lang. Sec. 11143.

24 847. Aff. par. 231, T. 31031.

25 848. T. 30655.

849. Ex. 2249, T. 16197.

Office. KIDO in his affidavit said he never saw this telegram.
850.

287. This is confirmed by TOGO's admission on cross-examination that he never showed the telegram to KIDO and KIDO told him that he had not seen the telegram.
851. KIDO testified⁸⁵² that he had no recollection of talking to Foreign Minister TOGO about the telegram. KIDO further stated that he does not deny that TOGO spoke to him but if he did it must have been after receipt of Secretary of State Hull's message of the same date which had reached Japan and created a changed situation minimizing the importance of the telegram from NOMURA. He further stated that he never had any weighty conference with TOGO about it and that if TOGO spoke to him it must have been very slightly due to the conditional nature of the telegram. KIDO had nothing to do with Foreign Minister TOGO's answering telegram of November 28, 1941.
853. KIDO was not cross-examined by anyone with respect to either of these telegrams.

288. According to the testimony of TOGO, elicited on both direct and cross-examination, Secretary

850. Aff. para. 234, T. 31036.
851. T. 35820, 35821.
852. Aff. para. 234, T. 31036.
853. Ex. 1193, T. 10442 - 10443.

Hull's note and the telegram of November 26th from
 1 Ambassadors NOMURA and KURUSU arrived almost simultan-
 2 eously on the morning of the 27th. ^{854.} He also stated
 3 on direct examination that the two ambassadors had no
 4 confidence in the success of the procedure outlined in
 5 their telegram of the 26th after receipt of Secretary
 6 Hull's note because in their telegram dispatched
 7 shortly after the receipt of the note they reported
 8 that there was no prospect of reaching an agreement and
 9 advised measures to be taken in case freedom of action
 10 was resorted to. ^{855.}

12 289. TOGO also testified on direct examination
 13 that on the 28th of November he called on the Premier
 14 fifteen minutes before the cabinet meeting which was
 15 scheduled to convene at 10 a.m. ⁸⁵⁶ He testified that
 16 the talk with the Premier and with SHIMADA who was
 17 also present was about the Ambassador's recommendation
 18 as well as the Hull Note. ⁸⁵⁷ He explained to them the
 19 contents of this message. ⁸⁵⁸ "Both the Premier and the
 20 Navy Minister were of opinion that there was absolutely
 21 no hope of a solution by such means as that proposed
 22 by the Ambassadors." ⁸⁵⁹ TOGO then went to the cabinet

24 854. Tr. 35,818.

25 855. Tr. 35,705, Ex. 2949.

856. Tr. 35,706-35,707.

857. Tr. 35,707.

858. Ibid.

859. Ibid.

meeting and left before its completion and he says that
 1 before being received in audience he explained to KIDO
 2 about the Hull Note and talked with him concerning the
 3 two Ambassadors' recommendation. ⁸⁶⁰ YAMAMOTO, a Foreign
 4 Office official, sides with TOGO in saying TOGO consulted
 5 ⁸⁶¹ KIDO. TOGO further said that KIDO was of the opinion
 6 that the Ambassadors' recommendation was insufficient
 7 to save the situation. ⁸⁶²

290. The prosecution erroneously claims that
 9 KIDO told TOGO that "If the conditions suggested by
 10 the Ambassadors were accepted, the result might be
 11 civil war." ⁸⁶³ The prosecution has misconstrued TOGO's
 12 testimony. It is clear that TOGO was referring to
 13 the Hull Note when he says that KIDO told him that
 14 " * * * if its conditions were adopted as the basis
 15 of a settlement, the result might be civil war." ⁸⁶⁴
 16 TOGO admitted on cross-examination that there was a
 17 discussion about the Hull Note at the cabinet meeting
 18 and that the government had no confidence in its
 19 realization and that applied to both the Hull Note and
 20 the telegram from Ambassadors NOMURA and KURUSU. ⁸⁶⁵

860. Ibid.

861. Tr. 26,064-26,065.

862. Tr. 35,707.

863. Par. JJ-79, Tr. 41,118.

864. Tr. 35,707, 35,708.

865. Tr. 35,818, 35,819.

1 It is important to note that TOGO testified that the
 2 government's decision on the Hull Note and on the
 3 telegram from NOMURA and KURUSU was made before TOGO
 4 spoke to KIDO. ⁸⁶⁶ Thus KIDO had no opportunity to
 5 advise the Emperor, as the government had already made
 6 its decision. TOGO also testified on cross-examination
 7 that when he had an audience with the Emperor after
 8 he spoke with KIDO he spoke to His Majesty about the
 9 Hull Note but did not speak to His Majesty about the
 10 telegram from NOMURA and KURUSU. ⁸⁶⁷ TOGO also admitted
 11 that the NOMURA-KURUSU telegram was in the nature of
 12 a diplomatic negotiation. He also admitted that it was
 13 his duty as Foreign Minister under the constitution and
 14 ordinances of Japan, that he had personal responsibility
 15 with respect to the duties of his office. ⁸⁶⁸
 16 291. Notwithstanding this, he claimed it ⁸⁶⁹
 17 was up to the government to decide whether the proposal
 18 contained in the Ambassadors' telegram should be adopted
 19 or not. The telegram however was conditioned upon
 20 approval of the Foreign Office. Although TOGO said
 21 that the government had no confidence in the realization
 22 of the suggestion of the Ambassadors ⁸⁷⁰ he admitted later
 23
 24 866. Tr. 35,819.
 25 867. Tr. 35,822.
 868. Tr. 35,822.
 869. Tr. 35,822-35,823.
 870. Tr. 35,818, 35,819.

on cross-examination that it was not submitted to the
 1 cabinet: " * * * since the matter had been agreed upon
 2 among the Prime Minister, the Navy Minister and the
 3 Foreign Minister the matter need not be presented to
 4 the cabinet, and it would be perfectly all right to say
 5 that this agreement of views represented the views of
 6 the government." ⁸⁷¹ From this it is apparent KIDO had
 7 no responsibility.

292. Although TOGO professed no desire to
 9 shove responsibility to KIDO ⁸⁷² he stated that if KIDO
 10 believed steps should be taken in opposition to the
 11 views of the government it would have been all right
 12 for him to have suggested it to the Emperor. ⁸⁷³ Apparently
 13 this statement was made to excuse TOGO's report to
 14 the Emperor of the government's decision on the Hull
 15 Note before KIDO had an opportunity to speak with the
 16 Emperor. It is quite apparent that TOGO was not fam-
 17 ilar with the duties of the Lord Keeper of the Privy
 18 Seal as his testimony is contrary to all the other
 19 evidence submitted on the responsibility of the Lord
 20 Keeper of the Privy Seal to the Emperor. ⁸⁷⁴ Once the
 21 government had arrived at a decision it was improper
 22
 23

24 871. Tr. 35,823-35,824.

872. Tr. 35,825.

25 873. Tr. 35,824.

874. Infra - p. 116-130.

1 for the Lord Keeper of the Privy Seal to advise the
 2 Emperor to take steps contrary to the decision of the
 3 government.⁸⁷⁵ As TOJO said "Summing it up, the Emperor
 4 had no free choice from the governmental structure
 5 setting up the cabinet and the Supreme Command. He
 6 was not in a position to reject the recommendations and
 7 advice of the cabinet and High Command. His wishes or
 8 hopes were necessarily assisted by the Lord Keeper,
 9 and even these hopes when expressed finally were to be
 10 scrutinized by the cabinet or the Supreme Command.
 11 Recommendations and suggestions after this careful
 12 examination had to be approved by the Emperor and never
 13 to be rejected. * * * These facts being what they are,
 14 it was solely upon the cabinet and the Supreme Command
 15 that the responsibility lay for the political, dip-
 16 lomatic and military affairs of the nation."⁸⁷⁶ He also
 17 said the Emperor has never rejected the government's
 18 decision on any matter in the entire history of new
 19 Japan.⁸⁷⁷

20
 21 ⁸⁷⁸ 293. On September 29, 1941, KIDO in his
 22 diary related a talk he had with HARA, President of
 23 the Privy Council, about holding a final Imperial

24 ⁸⁷⁵. Aff. par. 222, Tr. 31,024.

25 ⁸⁷⁶. Tr. 36,383.

⁸⁷⁷. Tr. 36,382.

⁸⁷⁸. Ex. 1142, Aff. par. 197, Tr. 30,958.

1 Conference before arriving at a decision on war,
2 making it less formal and including the Senior
3 Statesmen in the council. If we understand the
4 prosecution's summation correctly it has misstated to
5 the Tribunal that this was not followed as testified
6 to by KIDO. The meeting was held, it was less formal
7 than usual and the Senior Statesmen were there. 879

8 A plethora of evidence has been produced showing this
9 and it is neither contradicted nor impeached. The
10 Senior Statesmen met at a conference at the palace with
11 the government, they listened to a report given by
12 the Prime Minister on the development of negotiations
13 with America. This meeting was not attended by the
14 Emperor nor by KIDO. It recessed at 1 p.m. at which
15 time the Senior Statesmen, some cabinet members and
16 KIDO had luncheon with the Emperor. After luncheon
17 the Emperor had a one-hour meeting from 2 to 3 with
18 the Senior Statesmen at which TOJO and others from
19 the government were present. KIDO was also present
20 but did not participate or say anything at the meet-
21 ing. The Senior Statesmen gave their views to the
22 Emperor and at the conclusion of this meeting when
23 the Emperor and KIDO withdrew the Senior Statesmen
24

25 879. Aff. par. 236, Tr. 31,037; Aff. par. 237,
Tr. 31,038, Ex. 1196 as revised by Lang. Sec.
Tr. 16,187-16,198.

resumed their meeting with the government until
 1 4 p.m. after which KIDO was advised by Prince KONOYE
 2 that no decision was made at any of the two meetings
 3 between the Senior Statesmen and the representatives
 4 of the government. KIDO so testified. 880 His diary
 5 records it; 881 OKADA corroborated this; 882 SHIMADA
 6 corroborated it; 883 TOJO corroborated it. 884 It is
 7 also corroborated in TOJO interrogations. 885 There is
 8 no evidence to the contrary. That part of the con-
 9 ference at which the Emperor and KIDO were present is
 10 fully recorded. 886
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

- 23 880. Aff. par. 237, Tr. 31,038.
 24 881. Ex. 1196 as revised Tr. 16,187-16,198.
 25 882. Tr. 29,262.
 883. Tr. 34,795.
 884. Tr. 36,508.
 885. Ex. 1158-A, Tr. 10,513-10,515.
 886. Aff. par. 237, Tr. 31,038.

1 293-a. The reason why the prosecution only
2 devotes six lines of its individual summation against
3 KIDO to the meeting of November 29, 1941, and
4 unwarrantedly states that KIDO's statement that the
5 procedure he talked over with HARA was not followed
6 is quite apparent when one considers the fact that
7 the prosecution charged in Appendix E of the Indict-
8 ment that KIDO was "present at and concurred in the
9 decisions taken at * * * the conference * * * of
10 November 29, 1941 (ex-premiers)" and " * * * which deci-
11 sions prepared for and led to unlawful war on 7/8 Dec-
12 ember 1941." (The only other conference to which a
13 similar charge is made against KIDO is the one of
14 October 17, 1941, which has been considered heretofore.)
15 Naturally, as all the evidence shows no decision was
16 made at this conference of November 29, 1941, and
17 that KIDO did not even say one word there, the prosecu-
18 tion wants to ignore it.

19
20 294. On November 30, 1941, KIDO was summoned
21 by the Emperor and told that Prince TAKAMATSU had told
22 the Emperor in substance that the navy appeared to
23 be opposed to war and Prince TAKAMATSU had wanted to
24 know what was the real intention of the navy. KIDO
25 replied " * * * that His Majesty's decision is of
887. Rar. JJ-80, Tr. 41, 119.

1 such gravity that, once decided, it could not later
 2 be retracted. Hence it is felt that if there is the
 3 least uncertainty every possible precaution should be
 4 taken to do that to which His Majesty can give assent." 888

5 Are these the words of a conspirator, an
 6 aggressor at heart? The evidence is that KIDO was
 7 not a war monger. 889

8 295. KIDO suggested to the Emperor "that
 9 the Navy Minister and the Chief of the Naval General
 10 Staff be called at once and the true intention of the
 11 Navy be ascertained, and that the matter be conveyed
 12 frankly to the Premier also." 890

13 This is fully related in his diary. The
 14 Premier, who was planning to hold an Imperial Con-
 15 ference the next day, saw the Emperor a few minutes
 16 later and requested that it be called but His Majesty
 17 withheld his consent. 891 After the Navy Minister and
 18 Chief of Naval General Staff had conferred with the
 19 Emperor, KIDO was summoned in audience and the
 20 Emperor advised him that these officials had answered
 21 his questions with considerable confidence and that

22 888. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.
 23 Tr. 12,480.

24 889. Tr. 35,800-801.

25 890. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.
 Tr. 12,480.

891. Aff. par. 239, Tr. 31,045.

KIDO should instruct TOJO to proceed as planned.⁸⁹²

1 296. As KIDO stated he was told to advise
2 the Premier to proceed with the Imperial Conference
3 the next day which he did. This is confirmed by TOJO
4 who testified⁸⁹³ that KIDO called him by telephone and
5 stated that the Emperor allowed the Imperial Conference
6 to be held on December 1 as slated. This was also
7 corroborated by SHIMADA on cross-examination by the
8 prosecution.⁸⁹⁴
9

10 297. The prosecution guess as to what the
11 Emperor's instructions were⁸⁹⁵ is not borne out by the
12 testimony. As testified to by Admiral SHIMADA:

13 "Hence, Admiral NAGANO and I on November 30
14 told the Emperor that the navy had made adequate pre-
15 parations. The question of confidence in the ultimate
16 outcome of the war was not the theme of our conversa-
17 tion but only whether we were confident of the prepa-
18 rations which the navy had made."⁸⁹⁶
19

20 In so far as KIDO is concerned, this diary
21 entry of November 30, 1941, definitely establishes
22 that KIDO did not participate in decisions of the
23 government or High Command.

24 892. Ex. 1198, Tr. 10,468 as Cor. Lang Sec. Tr. 12,480.

25 893. Tr. 36,371.

 894. Tr. 34,699.

 895. Par. JJ-80, Tr. 41,119.

 896. Tr. 34,667.

298. The prosecution criticizes KIDO for
1 offering no further advice to avert war after the
2 Imperial Conference of December 1. This is not under-
3 standable. The evidence shows that he did his utmost
4 to avert it before the final decision was made and when
5 it was finally made by the Government and High Command
6 on December 1, 1941, he was powerless. It must be
7 remembered that KIDO was not an advisor to the Throne
8 on these matters. Every one of the fourteen ministers
9 of state of the cabinet and the Premier had access to
10 and advised the Emperor. The officials of the High
11 Command gave direct advice to the Emperor. The
12 Imperial Household Minister also gave advice to the
13 Emperor. Each one of these advisors was charged with
14 the duty and responsibility of advising the Emperor on
15 matters pertaining to his respective office. The
16 prosecution seems to overlook this and tries to create
17 the impression that KIDO was responsible for all this
18 advice. Furthermore, the undisputed evidence is that
19 with respect to matters falling within the sphere of
20 the High Command under Article 11 of the Constitution
21 the Lord Keeper of the Privy Seal had no authority to
22 interfere,⁸⁹⁷ and he did not interfere. TOJO testified
23 that he did not think that the Lord Keeper listened o
24
25
897. Tr. 36,510.

to the Emperor's desires in this respect nor gave his
 1 advice. As TOJO further stated, "Cabinet decisions,
 2 as a matter of course, were made on the responsibility
 3 of the members of the cabinet and the decisions of
 4 the Supreme Command were made on the responsibility
 5 of the members of the Supreme Command; and there was
 6 no space for any other person to interfere, and other
 7 people naturally includes the Lord Keeper of the
 8 Privy Seal."⁸⁹⁸

299. The prosecution's argument also over-
 10 looks the testimony of SUZUKI who stated it was neces-
 11 sary for the Prime Minister to get the agreements of
 12 the Ministers of War, Navy and Foreign Affairs to
 13 have the Emperor say he did not want war;⁸⁹⁹ that it
 14 was only the duty of the Lord Keeper of the Privy
 15 Seal to have such advice in case an inquiry was put
 16 to him by the Emperor.⁹⁰⁰

300. On the morning of December 8, 1941, as
 19 shown in KIDO's diary, at 12:40 a.m. Foreign Minister
 20 TOGO telephoned KIDO and told him that Ambassador Grew
 21 had brought to him a telegram from President Roosevelt
 22 addressed to the Emperor. He asked KIDO how the
 23 message should be handled.⁹⁰¹ TOGO testified on direct

25 898. Tr. 36,511.

899. Tr. 35,327.

900. Tr. 35,330-35,331.

901. Ex. 1239 as cor Lang. Sec. Tr. 16,192.

1 examination that he first knew the contents of the
 2 message about 12:30 a.m. when Ambassador Grew called
 3 on him. ⁹⁰² TOGO testified on cross-examination he first
 4 called MATSUDAIRA, Tsuneo, Imperial Household Minister,
 5 about what procedure should be followed with respect
 6 to the telegram. ⁹⁰³ TOGO stated that MATSUDAIRA advised
 7 him that he should talk with the Lord Keeper of the
 8 Privy Seal and that TOGO then called KIDO on the tele-
 9 phone. ⁹⁰⁴ TOGO further stated on cross-examination
 10 that MATSUDAIRA did not ask him any questions regard-
 11 ing the contents of the telegram. ⁹⁰⁵ TOGO further testi-
 12 fied on direct examination that when he spoke with
 13 KIDO on the telephone KIDO suggested that TOGO consult
 14 the Premier, and KIDO also said that the Emperor would
 15 receive him even at such a time. ⁹⁰⁶

16 301. On cross-examination TOGO admitted
 17 that he did not tell KIDO the contents of the telegram
 18 over the telephone nor did KIDO ask him. ⁹⁰⁷ TOGO fur-
 19 ther testified that he had no recollection that KIDO
 20 did anything whatsoever to obstruct an interview
 21 between him and the Emperor that morning. ⁹⁰⁸ As a matter

- 23 902. Tr. 35,727.
 24 903. Tr. 35,794, 35,795, 35,796.
 25 904. Tr. 35,728.
 905. Tr. 35,796.
 906. Tr. 35,728.
 907. Tr. 35,797.
 908. Tr. 35,798.

of fact, KIDO suggested it.⁹⁰⁹

302. KIDO's diary states that later he was notified that TOGO had proceeded to the palace so KIDO went there at 2:40 a.m.⁹¹⁰ He further testified that he spoke with Foreign Minister TOGO for a few minutes and that he did not see the telegram nor did TOGO tell him of its contents. KIDO went home arriving at 3:30 a.m.⁹¹¹ When cross-examined by the prosecution, who was the only one to cross-examine him on the subject, KIDO testified that he did not find out what was in President Roosevelt's telegram on the morning of December 8;⁹¹² that when he was talking to TOGO the Chamberlain told him that the Emperor had already come out;⁹¹³ and TOGO immediately left his presence and KIDO did not learn anything from him.⁹¹⁴ KIDO was about to ask him when the Emperor was announced.⁹¹⁵ He further testified that he believed that TOGO arrived at the palace after he did and when TOGO arrived he only spoke to him for a minute or two;⁹¹⁶ that KIDO waited at the palace in the event of any inquiries from the Emperor;⁹¹⁷ that he did not request an audience

909. Ex. 1239 as cor. Lang. Sec. Tr. 16,192.

910. Ibid.

911. Aff. par. 242, Tr. 31,049.

912. Tr. 31,605.

913. Ibid.

914. Ibid.

915. Ibid.

916. Tr. 31,606, 31,607.

917. Tr. 31,609.

as it was improper for him to be received in audience together with a minister of state reporting to the Emperor on matters under his jurisdiction.⁹¹⁸ KIDO

waited until TOGO had completed his audience but TOGO went home. When KIDO became aware of that and the fact that the Emperor had retired KIDO went home.⁹¹⁹

303. In his direct testimony TOGO said before he had an audience with the Emperor he had a three- or four-minute talk with KIDO " * * * telling him the contents of the telegram. * * * "⁹²⁰ If there was more to this conversation TOGO failed to reveal it in his direct testimony. On cross-examination when TOGO was asked if he had told KIDO what TOJO had told him he said: "KIDO, first of all, gave me his own opinion and then asked me what TOJO's opinion was, to which question I said that this opinion was the same as yours."⁹²¹ It is to be noted that here TOGO says KIDO expressed his opinion "first of all," which can only mean one thing -- to a diplomat accustomed to choosing correct words -- "before anything else was said." In other words, before he told KIDO the contents of the telegram, as he said he did on direct, KIDO expressed

- 918. Tr. 31,608.
- 919. Tr. 31,610.
- 920. Tr. 35,729.
- 921. Tr. 35,828, 35,829.

1 his opinion. If the first statement KIDO made was
2 to give his own opinion then there would have been no
3 necessity for TOGO to have told him the contents of
4 the telegram because KIDO's opinion would naturally
5 have had to be based on knowledge of the contents of
6 the telegram.

7 304. On cross-examination by the prosecution,
8 TOGO admitted that in the previous telephone conver-
9 sation with KIDO "It did not seem that he knew any-
10 thing about the contents of the message." ⁹²² As TOGO
11 also admitted that he did not tell KIDO the contents
12 of the telegram over the telephone nor did KIDO ask
13 him, ⁹²³ it is thus difficult to understand how KIDO knew
14 the contents and was able to give his opinion before
15 being advised of the contents by TOGO if TOGO is to
16 be believed that KIDO gave his opinion "first of all."
17 Apparently TOGO was the only one who had the trans-
18 ⁹²⁴lation of the telegram.
19

20 305. On cross-examination by counsel for
21 KIDO, after TOGO had stated that KIDO, first of all,
22 gave him his own opinion, TOGO was then asked if he
23 showed KIDO President Roosevelt's telegram. He admitted
24 that he had the translation of the message from
25

922. Tr. 35,874.
923. Tr. 35,797.
924. Tr. 35,728.

1 President Roosevelt in his hand " * * * and I spoke to
2 him about the contents of the telegram." ⁹²⁵ He did not
3 show the telegram to KIDO, and " * * * nor was it
4 necessary for me to show it to him." ⁹²⁶ In other words,
5 it is quite apparent that TOGO did not consider KIDO
6 of sufficient importance to show him the telegram. TOGO
7 admits that the Chamberlain came in announcing that the
8 Emperor was in waiting. ⁹²⁷

9 306. TOGO, over the weekend, after he had
10 an opportunity to reflect, early on Monday morning,
11 December 22, 1947, when the prosecution called his atten-
12 tion to his answer on cross-examination by KIDO's coun-
13 sel that "KIDO, first of all, gave me his own opinion
14 and then asked me what TOJO's opinion was, to which
15 question I said that his opinion was the same as yours," ⁹²⁸
16 stated that this conversation took place after TOGO had
17 told KIDO the contents of the message. We submit that
18 this explanation conflicts with his previous statement
19 that KIDO expressed his opinion "first of all."
20
21
22
23

24 925. Tr. 35,829.
25 926. Tr. 35,829.
927. Tr. 35,829.
928. Ibid.

W
o
l
f

1 307. Since TOGO has stated that his con-
 2 versation with TOJO about the telegram had lasted
 3 between fifteen and twenty minutes⁹²⁹ and his subsequent
 4 conversation with the Emperor had lasted approximately
 5 15 minutes,⁹³⁰ we submit it was impossible for TOGO
 6 to have repeated the contents of the message, obtained
 7 KIDO's opinion and repeated TOJO's opinion to KIDO,
 8 all within the space of "a minute or two" as testified
 9 to by KIDO or "within 3 or 4 minutes" as testified to
 10 by TOGO. An examination of the length of the document
 11 also substantiates this. Certainly the discussion of
 12 the reply would not account for the difference in time.

13 308. We also wish to point out that in its
 14 summation of TOGO's evidence the prosecution has
 15 stated that both KIDO and TOGO agreed that TOGO should
 16 see the Emperor and both agreed to the evasive reply
 17 which TOGO had drawn up.⁹³¹ The latter statement is
 18 directly opposite to the evidence. TOGO specifically
 19 stated on cross-examination by the prosecution that
 20 he did not tell KIDO "****that the draft of the reply
 21 had been decided upon."⁹³² TOGO further stated that
 22 the agreement of views on the draft reply was between
 23 TOGO and TOJO.⁹³³ There is no evidence KIDO knew what

24 929. T. 35,827.

25 930. T. 35,729.

931. Par. WW-37, T. 41,936.

932. T. 35,901.

933. Ibid.

1 the draft was and no evidence that he even knew a
2 draft existed.

3 309. That TOGO considered KIDO's position
4 unimportant is further demonstrated by TOGO's testimony
5 on cross-examination by the prosecution that TOGO
6 never even mentioned to the Emperor that he had spoken
7 to KIDO about the matter.⁹³⁴ It is also demonstrated

8 by the fact that TOGO testified he suggested the draft
9 of the Emperor's reply to the Emperor, and obtained
10 the Emperor's consent at that meeting, well knowing
11 that he had never discussed the reply with KIDO and
12 that KIDO had had no opportunity to discuss the reply
13 with the Emperor.⁹³⁵ He admits that he never talked

14 to KIDO about the reply and even went so far as to say
15 he did not think it was necessary for him to give
16 KIDO any additional explanation.⁹³⁶

17 310. The prosecution confronted TOGO with
18 a document from the Foreign Office entitled "Particulars
19 Regarding Cordial Message from President Roosevelt,"⁹³⁷
20 written sometime in 1942.⁹³⁸ It was admitted in
21 evidence and TOGO was examined at length on the contents
22 of it. On cross-examination by the prosecution TOGO

24 934. T. 35,904.

25 935. T. 35,904, 35,905.

936. T. 35,907.

937. T. 35,913.

938. T. 36,121.

1 admitted that the document was prepared in the Foreign
 2 Office but he could not quite say that the entire
 3 contents of it were correct, and he did not order it
 4 prepared.⁹³⁹ Although the document deals with the

5 exact language used between TOGO and Ambassador Grew
 6 and it refers to what happened when TOGO had an
 7 audience with the Emperor, TOGO never admitted that he
 8 prepared the document. On cross-examination by the
 9 prosecution, he pointed out that there were some
 10 errors in the document, one of which was that it did
 11 not mention the fact that TOGO met KIDO on the morning
 12 of December 8th, 1941.⁹⁴⁰ He overlooked another

13 omission because on recross-examination he admitted
 14 that the document also did not mention the telephone
 15 conversation that he had with KIDO.⁹⁴¹ He also
 16 stated that "the mere fact that a personal pronoun 'I'
 17 is used here is not proof that I wrote it."⁹⁴²

18
 19 311. The prosecution also queried TOGO
 20 about a statement to one of the prosecutors on February
 21 22nd and 28th, 1946 which was signed on March 6th, 1946.
 22 There TOGO devoted two complete paragraphs to discussing
 23 what happened on the early morning of December 8th, 1941.⁹⁴³

24 939. T. 35,914.

25 940. T. 35,921.

941. T. 36,122.

942. Ibid.

943. T. 36,124.

1 When it was pointed out to TOGO that he had not
 2 mentioned the meeting he had with Marquis KIDO on
 3 the early morning of December 8th, TOGO said that the
 4 statement was prepared by Mr. Morgan, the investigator,
 5 in a resume form and that Mr. Morgan "at that time
 6 did not ask me any questions pertaining to my relations
 7 or connections with Marquis KIDO and so I did not tell
 8 him anything about that."⁹⁴⁴ That Mr. Morgan must
 9 have spoken to TOGO about his relations with KIDO is
 10 apparent because the document recites that he spoke to
 11 KIDO on the telephone that morning. And when reminded
 12 of this TOGO sidestepped saying: "It is the same thing."⁹⁴⁵

13 312. If the question of whose recollection
 14 on the morning of December 8th is correct - TOGO's or
 15 KIDO's has any importance - we refer to the testimony
 16 of MATSUDAIRA, Yasumasa who was Chief Secretary to
 17 KIDO and who was called and testified in TOGO's case.
 18 Counsel for TOGO objected to and tried to prevent
 19 MATSUDAIRA from testifying, although the prosecution
 20 did not object.⁹⁴⁶ The prosecution states that KIDO
 21 was contradicted on his recollection of the conversation
 22 he had with TOGO in the morning by MATSUDAIRA "****who
 23 says he heard the contents, though not the details,
 24

25 944. Ibid.

945. T. 36,124, 36,125.

946. T. 35,598, 35,597.

from KIDO on the ~~same~~ morning." ⁹⁴⁷ Apparently the
 1 prosecution overlooks the fact that one of MATSUDAIRA's
 2 answers was submitted to the Language Section and

3 corrected. ⁹⁴⁸ MATSUDAIRA testified that he had a
 4 conversation with KIDO some time before noon on the

5 morning of December 8th about the telegram, and "Marquis
 6 KIDO said that at that time he was not familiar with

7 the details." During the course of this examination
 8 a bad interpretation of an answer gave rise to the

9 question which immediately followed but the answers
 10 clearly show that KIDO told MATSUDAIRA that he was

11 not familiar with the details nor of the contents of
 12 the telegram. The pertinent questions and answers

13 originally given and as corrected appear below. ⁹⁴⁹
 14

15 Although TOGO's counsel had tried to prevent MATSUDAIRA
 16

947. Par. JJ-81, T. 41,120

948. T. 36,597.

949. T. 35,600 and as cor. Lang. Sec. T. 36,5

18 "Q: Tell us what you said to Marquis KIDO and
 19 what he said to you.

19 "A: Marquis KIDO said that at that time he was not
 20 familiar with the details.

20 "Q: Had you asked him what the details of the
 21 telegram were?

21 "A: Well, I heard about the contents of the telegram -

22 "Correction: I heard what the contents of the
 23 telegram were about."

23 This corrected answer was subsequently changed by the
 24 Language Section to read: (T. 36,597)

24 "A. I asked what that telegram was about, for
 25 which --

25 "Q. Was that from Marquis KIDO or from some one
 else?

950
from testifying, he refused to cross-examine him.
1 MATSUDAIRA was not cross-examined by the prosecution
2 either.

3 313. The prosecution comments on the fact
4 that KIDO failed to call MATSUDAIRA but only examined
5 him when he was called as a witness for TOGO "although
6 the matter was outside the scope of his affidavit."
7 The prosecution refers to this as if it were something
8 unusual. Time after time during the course of this
9 trial the Tribunal granted permission to other defense
10 counsel to ask questions of witnesses on direct
11 examination outside the scope of the original affidavit.
12 Furthermore no issue had been raised between TOGO
13 and KIDO at the time KIDO testified and there was
14 no necessity for calling MATSUDAIRA at that time on
15 this point to corroborate KIDO. The issue arose in
16 TOGO's affidavit which was served prior to the time
17 MATSUDAIRA took the stand for TOGO. The prosecution
18 also complains that there are other points on which
19

20 949 - Contd.

21 "A. From Marquis KIDO.

22 "Q. And did he tell you the details as well as
23 the contents?

24 "A. No, I don't think at that time that I heard
25 anything of the contents from him. He said
he was at that time unfamiliar with the details
of the telegram - of the contents of the
telegram.

950. T. 35,602.

1 MATSUDAIRA might have corroborated or contradicted
 2 KIDO. If the prosecution thought he would contradict
 3 KIDO why didn't it cross-examine him at that time,
 4 or call him in rebuttal?

5 314. The prosecution's usual guess that
 6 KIDO should have known the whereabouts of the telegram
 7 during the day of December 7th is of course without
 8 foundation and unsupported by the evidence.⁹⁵¹ That
 9 was not his duty. That it has no basis in fact is
 10 apparent from the prosecution's subsequent sentence
 11 that it was the practice of the Foreign Ministry and
 12 the Chief of Staff to collect copies of cables.

13 315. KIDO arrived at his office at 7:15 a.m.
 14 on the morning of December 8th, 1941. Prior to that,
 15 a little after 6 o'clock one of the aide de camps
 16 had called him on the telephone and told him about
 17 the naval attack on Hawaii. He did not go into details.⁹⁵²
 18 KIDO testified this was the first information he had
 19 about the Pearl Harbor Attack. He also testified on
 20 direct examination that before leaving his home he
 21 heard over the radio about the attack.⁹⁵³ It was
 22 shown on cross-examination that it took him about ten
 23 minutes to drive from his home to the Imperial Palace.⁹⁵⁴
 24
 25

951. Par. JJ.81, T. 41,121.

952. Aff. par. 242, T. 31,048.

953. Aff. par. 243, T. 31,050.

954. T. 31,606.

1 Thus he had time to hear the radio report before he
2 left home. The prosecution did not cross-examine him
3 on his telephone conversation with the aide de camp
4 nor did it cross-examine him on the report he heard
5 over the radio. KIDO did not say in his affidavit
6 that it was announced over the radio that Hawaii or
7 Pearl Harbor was mentioned. He stated he received
8 that information from the Aide de Camp. The prosecution
9 says that if he heard the radio report "it would not
10 account for the knowledge shown in the Diary." The
11 prosecution overlooks KIDO's testimony that he heard
12 about Hawaii from the Aide de Camp. The prosecution
13 criticizes the defense for not calling corroborative
14 evidence of this. It was not challenged nor contested
15 on cross-examination. If KIDO's statement was not
16 correct, the prosecution undoubtedly would have called
17 a witness in rebuttal to disprove it. It did not do
18 so nor has it accounted for the absence of such rebuttal
19 evidence. This testimony therefore stands unimpeached.
20

21 316. In addition the prosecution endeavors
22 to create the impression that KIDO knew about the
23 attack on Pearl Harbor ahead of time although there
24 is no evidence to support it. It fails to remind the
25 Tribunal however of the vast amount of evidence that
this attack was highly secretive known only to a limited

number of top ranking officials and was a High Command
 1 matter and not a Cabinet matter. ⁹⁵⁵ In view of the

2 fact that KIDO was regarded as pro-American and pro-
 3 British and his guard had been increased shortly before
 4 it can well be imagined that KIDO would be one of the
 5 last who would have been informed by the High Command
 6 of the proposed attack. If the prosecution had any
 7 doubts about KIDO's evidence on this, why didn't it
 8 cross-examine him? In any event, the prosecution
 9 complaint is not well founded. For example corroborative
 10 evidence definitely shows that no civilian officials
 11 knew of the Pearl Harbor Attack as testified to by
 12 SHIMADA. ⁹⁵⁶ SHIMADA also testified on cross-examination

13 that there would be no chance of Marquis KIDO knowing
 14 of the Pearl Harbor Attack before it occurred. He
 15 was not one of the high ranking officials of the
 16 Japanese Government. ⁹⁵⁷ TOJO stated that he, that is,
 17 TOJO, was informed of it very secretly, but the other
 18 cabinet members did not know of it. ⁹⁵⁸

19
 20 317. The prosecution claims that had the
 21 Emperor commanded Prime Minister TOJO not to commence
 22 the Pacific War, it would not have occurred and that,
 23 therefore, KIDO should be held responsible for his

- 24 955. T. 34,796.
 25 956. T. 34,818.
 957. T. 34,796.
 958. T. 36,390-36,391.

1 failure to advise the Emperor to issue such a command
2 to Premier TOJO. The evidence clearly shows that
3 KIDO submitted his views to avoid the Pacific War to
4 the Emperor on frequent occasions. If it is to be
5 contended that KIDO should have advised the Emperor
6 not to commence the Pacific War and that the Emperor
7 should have followed his advice (this is the desirable
8 state of affairs referred to by the prosecution), just
9 what was the *raison d'être* of the Japanese Government.
10 Had KIDO the authority to command the Prime Minister,
11 the High Command and the Cabinet? Does the prosecution
12 contend that KIDO was Japan's ruler - more powerful
13 than the Emperor, the Cabinet and the High Command
14 in reality? Does the prosecution contend that KIDO
15 should have been such a powerful ruler of Japan in
16 order to be exonerated now?

17
18 318. Is it fair play to denounce KIDO by
19 capitalizing on an unfortunate circumstance, to say
20 the least, where he is unable to adduce clear convincing
21 and clinching evidence, aside from his diary and other
22 evidence, by calling the Emperor as a witness to
23 corroborate him on his conversations with the Emperor
24 which would prove the groundlessness of the prosecution's
25 allegations that KIDO effected a compromise with the
"Gumbatsu", that he recommended a second KONOYE Cabinet

1 to the Emperor to make the Army's position favorable,
2 that he participated in common planning and conspiracy
3 for aggressive wars, that he was responsible for atrocities
4 that he recommended TOJO to the Emperor as the succeeding
5 Prime Minister for the purpose of waging war and that
6 he persuaded the Emperor to approve the Pacific War?
7 Let us be fair, with a man's life at stake.

8 319. Following the example of the King of
9 England, the Emperor kept himself within a self-imposed
10 pale of power toward the government as a sovereign of
11 a constitutional monarchy. The Emperor reigns but
12 does not govern, according to the interpretation of
13 the Japanese Constitution. He expresses his own desires
14 to the Prime Minister before the government or the
15 High Command makes any decision and cautions the High
16 Command as in the case of the Imperial Conference on
17 September 6th, 1941, but the government makes a decision
18 on its own judgment and does not necessarily make a
19 decision as desired by the Emperor on some occasions
20 as testified to by TOJO.⁹⁵⁹ Where the government
21 makes a decision and petitions the Emperor to sanction
22 it, the Emperor never vetoes it though he personally
23 does not approve of it. This was also testified to
24 by TOJO.⁹⁶⁰ This practice was strictly observed by all
25

1 Emperors since the establishment of the constitution.
2 The prosecution persistently denounces KIDO and
3 attempts to incriminate him for his alleged negative
4 responsibility during his tenure of office as Lord
5 Keeper of the Privy Seal in spite of Japanese
6 jurisdiction, unwritten law and political reality.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1445, a recess was
10 taken until 1500, after which the proceed-
11 ings were resumed as follows:)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Logan.

4 MR. LOGAN: If the Tribunal please, I will
5 continue reading KIDO's summation, page 260, paragraph
6 319a.

7 XII. (h) Efforts for Peace.

8 319a. KIDO testified⁹⁶¹ that for the first
9 six months after the outbreak of the war Japan was
10 intoxicated with an unbroken string of victories,
11 gained by the Japanese armed forces at various fronts
12 in quick succession. As a patriotic Japanese he
13 naturally was imbued with a patriotic spirit, but
14 nevertheless he could not believe that Japan would
15 be able to emerge victorious from the war. He thought
16 it was necessary for him to exert every effort possible
17 to pave the way for peace with America and Great
18 Britain. On February 5, 1942 he was received in
19 audience by the Emperor and the talk drifted in the
20 direction of peace. KIDO took occasion to submit
21 his views and opinions to the Emperor, during the
22 course of which he stated that although the shortest
23 way to peace would be to fight it out, at the same
24 time it would be necessary to seize occasion to return
25 961. Aff. par. 246, Tr. 31052-31053.

K
a
p
l
e
u
&
Y
e
l
d
e
n

1 to peace as soon as possible for the purpose of
 2 minimizing the ravages of war.⁹⁶²

3 320. By reading the entire conversation
 4 KIDO had with the Emperor at this time it will
 5 be seen that KIDO was giving his opinions to the
 6 Emperor. Any conclusion that it shows KIDO was
 7 receiving foreign press reports is far fetched.
 8 There can be no question that KIDO told the Emperor
 9 that an early return to peace should be attempted
 10 because as shown in his diary of February 6, 1942,
 11 the Deputy Grand Chamberlain told him that the Emperor
 12 had expressed to the Empress his impressions about
 13 KIDO's views which he had presented to the Emperor
 14 on the day previous.⁹⁶³ And it was further stated by
 15 KIDO in his diary, "Yesterday when I was received in
 16 audience by the Emperor, I submitted my views to His
 17 Majesty that the Pacific War would not easily end and
 18 therefore that the shortest way to peace would be to
 19 fight it out, while paying due attention to construc-
 20 tion."⁹⁶⁴ His diary for February 12, 1942 further
 21 affirms KIDO's testimony on this point.⁹⁶⁵ In an
 22 audience with the Emperor on that date the Emperor

24 962. Aff. par. 247, Tr. 31053-31054.

25 963. Aff. par. 248, Tr. 31055.

964. Ibid.

965. Aff. par. 249, Tr. 31055-31056-31057.

1 told KIDO that he had had a conversation with Prime
 2 Minister TOJO wherein he had told him, "I presume
 3 that you are paying full attention so as not to miss
 4 the opportunity to terminate the war. It is not
 5 desirable for the sake of humanity and peace to have
 6 the war drag on needlessly, extending the ravages
 7 wrought by it."⁹⁶⁶

8 321. TOGO's further peeve against KIDO for
 9 not advising him of the Emperor's foregoing remarks
 10 to TOJO are unjustifiable.⁹⁶⁷ Since the Emperor had
 11 conveyed his message to TOJO it was then a matter
 12 for TOJO to take up with his cabinet members, not a
 13 matter for KIDO to discuss with the cabinet members.
 14 Furthermore KIDO had to be extremely cautious with
 15 whom he discussed peace at that time when Japan was
 16 riding high, wide and handsome on waves of victories.⁹⁶⁸
 17 Even TOGO admitted that KIDO had to exercise the ut-
 18 most caution.⁹⁶⁹ Apparently TOGO's peeve against KIDO
 19 was based on an erroneous assumption that KIDO had
 20 spoken to the Prime Minister about an early peace,
 21 but this was straightened out on the cross-examination
 22 of TOGO,⁹⁷⁰ and shown that KIDO had spoken to the

24 966. Aff. par. 249, Tr. 31056.
 25 967. Tr. 35740; Tr. 35807-35809.
 968. Aff. par. 246, Tr. 31053.
 969. Tr. 35816.
 970. Ibid.

1 Emperor, and the Emperor had spoken to TOJO. Thus
2 contrary to the prosecution's claim that KIDO did
3 not speak to the Emperor about an early peace, we
4 find KIDO's testimony and diary entries that he did,
5 corroborated by TOGO.

6 322. Although TOGO admitted that the
7 responsible authority to advise him of the desire of
8 the Emperor for peace was the Prime Minister he felt
9 that the Lord Keeper should have told him.⁹⁷¹ He
10 nevertheless admitted that KIDO was not an advisor to
11 TOGO or any other cabinet minister.⁹⁷² TOGO makes
12 the general statement that cabinet ministers would
13 tell the Lord Keeper what was told the Emperor and
14 that the Lord Keeper should convey to the cabinet
15 ministers the Imperial will. TOGO, however, failed
16 to advise KIDO either before or after TOGO saw the
17 Emperor on the morning of December 8, 1941 about the
18 draft reply of the Emperor to President Roosevelt's
19 speech. The prosecution's contention⁹⁷³ that KIDO's
20 Diary entry of February 6, 1942 does not support his
21 contention that he spoke with the Emperor about an
22 early peace is without foundation as both the entries
23

24 971. Tr. 35809.

25 972. Tr. 35810.

973. Par. JJ-83, Tr. 41122-123.

1 of February 6, 1942 and February 12, 1942 clearly
2 show that the subject matter of both these entries
3 is practically identical.

4 323. After Singapore fell, on February
5 16, 1942, KIDO recites⁹⁷⁴ that he received reports
6 of military successes achieved in quick succession.
7 He also recites pronouncements by the Army and Navy
8 that war preparations had been carefully made, as
9 for example, the surprise attack on Pearl Harbor had
10 been preceded by a mock attack on a harbor similar
11 thereto; that rigid training in jungle warfare had
12 been practiced, and landing operations training had
13 been carried out. These pronouncements captured the
14 fancy and imagination of the people, as a result of
15 which they reposed greater confidence in the fighting
16 services.

17 324. KIDO, who did not know of this previous
18 training, was skeptical and believed that even if
19 these were true, Japan could not maintain her successes
20 for any long period of time. He believed⁹⁷⁵ the
21 differences in the resources of the contending
22 countries would eventually decide the issue, that
23 Japan with her meager resources would come to grief,
24

25 974. Aff. par. 250, Tr. 31058.

975. Ibid.

and that although the attack on Pearl Harbor was a big success, at the same time it went a long way toward stirring up a feeling of hostility in America against Japan. Certainly neither this resume nor that contained in KIDO's affidavit⁹⁷⁶ justifies any conclusion that KIDO was receiving foreign press reports.⁹⁷⁷

325. KIDO's Diary on April 11, 1942⁹⁷⁸ records the conversation KIDO had with SHIGEMITSU about conditions in China concerning which KIDO said, "I cannot but think that the future situation will be very grave." His diary on June 11, 1942⁹⁷⁹ sets forth a conversation KIDO had with YOSHIDA, Shigeru, former Ambassador to England, about KONOYE visiting Europe to pave the way for peace. As KIDO's Diary records, KIDO said: "I replied to him that I have, of course, no objection to the basic idea that we must exert ourselves to terminate the war as soon as possible for the sake of world peace. * * *"

326. Thereafter the fortunes of war turned against Japan. KIDO continued his efforts for peace as shown in his diary and testimony.⁹⁸⁰ He discussed

976. Aff. par. 247, Tr. 31053-31054.

977. Par. JJ-84, Tr. 41123.

978. Aff. par. 253, Tr. 31061-31062.

979. Aff. par. 256, Tr. 31065-31066.

980. Aff. para. 259-260, Tr. 31068-31069.

1 the possibilities of effecting peace with Marquis
 2 MATSUDAIRA and Prince KONOYE on February 4, 1943,
 3 and had a talk with the Emperor on the same subject
 4 on March 30, 1943.⁹⁸¹ On May 13, 1943 he discussed
 5 with Foreign Minister SHIGEMITSU his ideas for peace
 6 which envisaged control of the army through a prince
 7 of the blood.⁹⁸² The next day, May 14, 1943, as
 8 shown in his diary, KIDO told Prince TAKAMATSU that
 9 it would be hard " * * * to reconcile the demands of
 10 the military with the terms of peace and that in such
 11 a case we should have to rely on the Prince's special
 12 assistance in solving the problem."⁹⁸³

13 327. At the beginning of 1944 the outlook
 14 for Japan was extremely dreary. In his diary of
 15 January 6, 1944⁹⁸⁴ KIDO records a peace plan which he
 16 had discussed with Marquis MATSUDAIRA. Contrary to
 17 the prosecution's contention KIDO accurately summarized
 18 this entry in his affidavit,⁹⁸⁵ and the prosecution's
 19 interpretation is misleading. At that time the war
 20 situation had been developing so adversely that Japan
 21 was compelled to take the defensive on all sectors.
 22 Japan's victory was inconceivable. As shown in the

23 981. Aff. par. 259-260, Tr. 31068-31069.

24 982. Ex. 1274; Aff. par. 261, Tr. 31069-31070.

25 983. Aff. par. 261, Tr. 31071.

984. Ex. 1276, Tr. 11367-11371.

985. Aff. par. 262, Tr. 31071-31073.

1 diary entry, KIDO's idea was that Japan should act
2 on her own judgment in the event Germany surrendered
3 unconditionally; that if the so-called A.B.C.D.
4 encirclement line was broken, which was the aim in
5 the Imperial Proclamation of War, Japan's aims would
6 have been fulfilled, and KIDO believed that there
7 would be no hope of setting up a peace plan as stated
8 in his diary, "unless it includes very considerable
9 concessions on our part."⁹⁸⁶ In effecting his plan
10 for peace he set forth five points:⁹⁸⁷

11 (1). Problems of the Pacific shall be
12 dealt with by nations bordering on that ocean.

13 (2). The Pacific question should be handled
14 by a joint commission of Japan, USSR, China, United
15 States of America, and Great Britain.

16 (3). The area under Japanese occupation
17 should be demilitarized.

18 (4). The smaller nations in the Pacific
19 area to be neutralized permanently.

20 (5). The economic policies in these regions
21 should be based on freedom, reciprocity, and equal
22 opportunity.

23 He stated in this diary that measures to
24 effect the peace may be taken with the USSR as a
25

986. Ex. 1276, Tr. 11369.

987. Aff. par. 262, Tr. 31071-31072; Ex. 1276,
Tr. 11379-11380.

1 go-between. At that time the Soviet Union was
2 maintaining neutrality towards Japan, and it is
3 quite apparent that judging by the developments of
4 the war situation, the Soviet Union could not be
5 excluded from the peace fabric in the Pacific, as it
6 might lead to a constant dispute. With Soviet par-
7 ticipation in the proposed commission a well-balanced
8 program could be effected even from the racial point
9 of view. Interposed as it was between the United
10 States and the Soviet Union, which were possessed of
11 oil resources, it would be extremely difficult for
12 Japan to maintain her prestige as an independent
13 power, and there would be no course left to Japan
14 but to have recourse to diplomacy for safeguarding
15 her independence. KIDO also stated in his affidavit
16 that Japan should devote the coming century to
17 fostering her national resources at home, and that
18 during this period she should cooperate with the
19 Soviet Union and China, and as set forth in his
20 diary: "* * * avoid being isolated and attacked all
21 at once by the nations of the world as a colored
22 race.* * *" ⁹⁸⁸ In other words, that Japan should
23 build up a defense to meet all changing circumstances
24 and save its real strength. Upon discussing this
25 988. Ex. 1276, Tr. 11371.

1 plan with Foreign Minister SHIGEMITSU, his opinion
2 was more pessimistic than KIDO's and as a result KIDO
3 maintained silence on this plan to government circles.

4 328. KIDO had further discussions with
5 Foreign Minister SHIGEMITSU--for example on June 26,
6 1944,⁹⁸⁹ and as a result of which it was apparent that
7 the government at that time had no intention of taking
8 any peace action, and if the secret leaked out that
9 they were endeavoring to secure peace, it would defeat
10 the purpose because the fighting services would
11 stiffen in their attitude and it would be extremely
12 difficult to take peace moves in that direction.
13 SHIGEMITSU suggested that the Senior Statesmen be
14 made to serve close to the Emperor so as to strengthen
15 the Imperial Court. KIDO stated the service they
16 would be able to render would not only be problematical,
17 but it might stimulate the public into regarding them
18 as Japanese Badogolios. This, of course, referred to
19 the fact that the Italian Monarchy was ruined by
20 Badoglio's peace, and KIDO was arguing to avoid a
21 similar fate for Japan.⁹⁹⁰ KIDO and SHIGEMITSU
22 believed that the only course left would be to take
23 action on the strength of an Imperial decision when
24 the opportunity presented itself, he to assume
25

989. Aff. par. 263, Tr. 31074-31075.

990. Aff. par. 263, Tr. 31075.

responsibility for the Imperial Court and SHIGEMITSU
 1 to act on behalf of the Government. KIDO also dis-
 2 cussed what measures might be taken with MATSUDAIRA,
 3 Tsuneo, Minister of the Imperial Household.⁹⁹¹

4 329. The war situation rapidly worsened.
 5 On the one hand the Senior Statesmen became more and
 6 more active and on the other hand the generals and
 7 admirals were meeting more regularly.⁹⁹² KIDO
 8 received visits from SHIGEMITSU, Prince KONOYE,
 9 Minister of State KISHI, and Home Minister ANDO, at
 10 various times in July, 1944.⁹⁹³ The informal deci-
 11 sion of the Senior Statesmen is shown in KIDO's
 12 Diary on July 17, 1944.⁹⁹⁴

22 991. Diary, June 29, 1944; Aff. par. 264, Tr. 31076.

23 992. Aff. par. 265, Tr. 31076.

24 993. Ibid.

25 994. Aff. par. 266, Tr. 31077-31078.

330. The TOJO Cabinet resigned en bloc on
 1 July 18, 1944, placing the responsibility for the cabi-
 2 net change on the Senior Statesmen.⁹⁹⁵ The next day
 3 the Senior Statesmen met to select a succeeding prime
 4 minister. A comprehensive discussion was had by the
 5 Senior Statesmen, and KIDO reported the results to the
 6 Throne. The eventual decision was that KOISO would be
 7 appointed the next prime minister. KIDO's efforts in
 8 having an Imperial mandate issued to Admiral YONAI
 9 as Navy Minister and Deputy Prime Minister are set
 10 forth in his affidavit.⁹⁹⁶ This cabinet was known
 11 as the KOISO-YONAI Coalition Cabinet. When the Emperor
 12 asked KIDO if he thought, judging from the line-up at
 13 the Installation Ceremony, whether or not TOJO might
 14 resume his post of War Minister as shown in his diary,⁹⁹⁷
 15 "I replied that I feared that it would have an unfavor-
 16 able effect on the political situation."
 17

331. The prosecution states that at this
 18 conference KIDO "... twice explained that what he
 19 meant by 'finishing the war' was to choose an army
 20 man for the strengthening of home defenses, the in-
 21 crease of army strength in the homeland and that of
 22 the military police."⁹⁹⁸ KIDO made no such explanation.
 23

25 995. Aff. par. 268, tr. 31,080

996. Aff. par. 270-271, tr. 31,103-31,104-31,105

997. Ex. 1278, p. 12, as Cor. by Lang. Sec., tr. 16,195

998. Par. JJ-86, tr. 41,126

1 The prosecution has taken two disjointed phrases used
2 at widely different times by KIDO in this conference
3 and united them into one idea. At the beginning of
4 the conference the question arose as to the advisabili-
5 ty of the military confining themselves to the field
6 of strategy and command, and that civil officials
7 should handle political affairs. In view of the long-
8 standing practice in Japan, some of the Senior Statesmen⁹⁹⁹
9 believed that it would be difficult for Japan to reach
10 "this point in one jump." It was while discussing
11 this policy that KIDO said, "In short, it is a prac-
12 tical problem. Our first object is to finish the war.
13 Even if we tried to reform the political situation
14 simultaneously, it would be impossible to do. To think
15 on two planes at this time will obscure our object-
16 ive."¹⁰⁰⁰ The discussion then turned to the question
17 as to whether the next premier should be an army man
18 or a navy man. It was during the course of this
19 latter discussion that KIDO said, "The strengthening
20 of home defenses, the increase of army strength in the
21 homeland and that of the military police require that
22 we choose someone from the army."¹⁰⁰¹ From this it
23 is quite apparent that the prosecution's contention is
24

25 999. Aff. par. 269, tr. 31,087
1000. Aff. par. 269, tr. 31,087
1001. Aff. par. 269, tr. 31,092

naive.

1 332. SHIGEMITSU was retained as Foreign
2 Minister in the new cabinet and he and KIDO discussed
3 peace possibilities on many occasions from July through
4 November 1944, as is shown from the excerpts from
5 KIDO's Diary as set forth in his affidavit. ¹⁰⁰² KIDO
6 also discussed this matter with the Emperor on January
7 6, 1945, as shown in his diary. ¹⁰⁰³ As explained,
8 "the highest policy" referred to in the diary was the
9 decision for peace. ¹⁰⁰⁴ In order that the Emperor
10 and the Senior Statesmen could consult with one another
11 about effecting a peace without arousing the suspicion
12 of the military, KIDO reported a plan to the Emperor
13 that the Senior Statesmen visit him individually on
14 different days in the form of paying respects to His
15 Majesty. This idea was carried out as shown in KIDO's
16 Diary for February 1, 1945. ¹⁰⁰⁵

18 333. On April 5, 1945, Premier KOISO resigned.
19 Because YONAI as outgoing Navy Minister would not be
20 able to attend the Senior Statesmen Conference, KIDO
21 asked his opinion beforehand about a successor to
22 Premier KOISO, and YONAI approved Admiral SUZUKI, as
23 is shown in KIDO's Diary. ¹⁰⁰⁶ The Senior Statesmen
24

- 25 1002. Aff. par. 274, tr. 31,107-31,108-31,109
1003. Aff. par. 276, tr. 31,111-31,112
1004. Aff. par. 276, tr. 31,111
1005. Aff. par. 278-279, tr. 31,113-31,114
1006. Pros. ex. 1282, tr. 11,351; tr. 16,195, p. 3

1 Conference was held on April 5, 1945. The prosecution
2 processed part of this conference, but the complete
3 recordation is contained in KIDO's affidavit. ¹⁰⁰⁷ This
4 meeting clearly shows that in choosing SUZUKI as Premier
5 the Elder Statesmen, as well as KIDO, phrased their
6 words very particularly and meaningfully. Their inten-
7 tion led to SUZUKI's selection as a man capable of
8 bringing the war to an end.

9 334. While it is true that KIDO did say
10 that he was of the same opinion as HIRANUMA after
11 HIRANUMA talked at length on various matters, it is
12 quite apparent from reading the complete conference
13 that KIDO was definitely in favor of SUZUKI for the
14 purposes of bringing about peace. KIDO stated, "The
15 public does not always cooperate earnestly with the
16 measures taken by the government," and after discussing
17 various problems, stated, "... the incoming cabinet
18 must be one that will place confidence in the people."
19 He further stated, "... now that the Japanese soil is
20 on the verge of becoming a battlefield, strengthening
21 of the government has become all the more necessary,
22 and therefore an imposing and sedate cabinet, which
23 has the confidence of the people, must be established."
24 1007, Ex. 1282, aff. par. 285, tr. 31,122, tr. 31,147
25

He expressed his hope that SUZUKI would rise to the
 1 occasion. It was at this point that KIDO and TOJO
 2 had a heated discussion. TOJO would not yield to the
 3 appointment of a non-army man, and, on the contrary,
 4 he went the length of saying that if such a thing was
 5 done the army might look the other way (meaning a coup
 6 d'etat by the army). KIDO replied that the nation would
 7 look the other way if an army man was chosen. The un-
 8 contradicted evidence is that none of the conferees
 9 touched upon peace moves explicitly. In view of
 10 General TOJO's presence at the conference, any tact-
 11 less remark might have stimulated the army to unscrupu-
 12 lous counter measures. All of the conferees except
 13 General TOJO had a tacit understanding on this point,
 14 which was given expression in their desires for "a man
 15 free from any commitment in the past," as expressed by
 16 KONOYE and HIRANUMA.
 17

18 335. The further efforts of KIDO to have
 19 Baron SUZUKI accept the premiership are contained in
 20 KIDO's affidavit.¹⁰⁰⁹ KIDO continued to have peace
 21 talks with various people such as TOGO, Professors
 22 NAMBARA and TAKAGI.¹⁰¹⁰ On June 8, 1945, KIDO drafted
 23 a tentative peace plan, which is set forth in his diary
 24
 25 1008. Aff. par. 285, tr. 31,136
 1009. Aff. par. 286, tr. 31,142-31,143
 1010. Aff. par. 288, tr. 31,145

for that date. ¹⁰¹¹

KIDO continued peace talks with

Chief Secretary MATSUDAIRA, Mr. KASE, of the Foreign

Office, ¹⁰¹² and Colonel MATSUTANI. ¹⁰¹³

He further dis-

cussed this with Prime Minister SUZUKI and Navy Minister

YONAI, TOGO, and ANAMI in June 1945. ¹⁰¹⁴

³³⁶. On June 20, 1945, KIDO suggested to the

Emperor that he summon the component members of the

Supreme Council for Discussion of War, especially since

Foreign Minister TOGO felt so apprehensive about the

recent decision of the Imperial Conference. ¹⁰¹⁵ On

June 21, 22, 1945, KIDO had further audiences with the

Emperor. As shown in his diary of the latter date,

Imperial wishes for the termination of the war were con-

veyed by the Emperor to the members of the Supreme War

Directing Council. ¹⁰¹⁶ On June 25, 1945, Baron HIRA-

NUMA approved of KIDO's tentative peace plan. Prior to

that the government, at the instance of Foreign Minis-

ter TOGO, had opened secret negotiations with the

Soviet Ambassador in Tokyo through Mr. HIROTA, but no

progress was made. No agreement of views was reached

by the Supreme Council for the Direction of War. Time

was being wasted. KIDO urged haste. As a result the

¹⁰¹¹. Aff. par. 289, tr. 31,145

¹⁰¹². Tr. 31,226

¹⁰¹³. Aff. par. 290, tr. 31,151

¹⁰¹⁴. Aff. par. 291-292-293-294-295, tr. 31,152-31,158

¹⁰¹⁵. Diary, June 20, 1945; Aff. par. 296, tr. 31,160

¹⁰¹⁶. Diary, June 21, 22, 1945; Aff. paras. 297-298;
tr. 31,161-31,162-31,163

Emperor on July 7, 1945, summoned Prime Minister SUZUKI
 1 to the palace and commanded him to enter into peace
 2 negotiations immediately. ¹⁰¹⁷ His Majesty suggested
 3 that the Soviet Union should be frankly asked for media-
 4 tion and a special envoy dispatched there with the
 5 Emperor's personal message. KONOYE accepted the
 6 order of the Emperor to go to the USSR, but prior to
 7 the reply of the Soviet Union the Potsdam Declaration
 8 was issued by the Allies. ¹⁰¹⁸ As testified to by
 9 TAKAGI, Yasaka, at this time KIDO favored peace efforts
 10 through the USSR, due to her neutral position, and also
 11 wanted to keep two routes open for peace. KIDO told
 12 him the opportunity was then ripe for peace. ¹⁰¹⁹ On
 13 August 6, 1945, the atomic bomb was dropped at Hiroshima.
 14 On August 9, 1945, the Soviet Union declared war on
 15 Japan.
 16

17 337. On the morning of August 9, 1945, KIDO
 18 had an audience with the Emperor, advising him to
 19 accept the Potsdam Declaration and terminate the war. ¹⁰²⁰
 20 The Supreme Council for the Direction of War discussed
 21 the acceptance of the Potsdam Declaration on the basis
 22 of four conditions, but they could not arrive at a
 23
 24 ^{1017.} Diary, July 7, 1947; Aff. par. 299, tr. 31,114-31,115
 25 ^{1018.} Diary, July 12, 1945; Aff. paras. 300-301,
 tr. 31,166-31,171
^{1019.} Tr. 31,642-31,643
^{1020.} Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,174-31,177

1 decision. Later the same day, August 9, 1945, the
 2 cabinet was unable to arrive at a decision to accept
 3 the Potsdam Declaration, and so they decided to submit
 4 the question to the Emperor for decision. ¹⁰²¹ That
 5 evening an Imperial Conference was held in the presence
 6 of the Emperor when it was decided to accept the Pots-
 7 dam Declaration on the sole condition of the reaffirma-
 8 tion of the Emperor's sovereignty and the Imperial
 9 House. ¹⁰²²

10 338. On August 10, 1945, an atomic bomb was
 11 dropped at Nagasaki, as a result of which moves and
 12 counter moves between the peace and war parties in
 13 Japan occurred. KIDO foresaw difficulties ahead to
 14 overcome, and he thought there would be no course
 15 left but to broadcast an Imperial Rescript to the nation
 16 on the part of the Emperor terminating the war. He
 17 conferred with Mr. ISHIWATA, Minister of the Imperial
 18 Household, who approved of his proposal, and thereafter
 19 this was approved by the Emperor.
 20
 21
 22
 23
 24

25 ¹⁰²¹. Diary, Aug. 9, 1945; Aff. par. 302, tr. 31,177
¹⁰²². Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,177

339. On August 12, 1945 the reply from the
 1 Allies was received and it was submitted to the throne
 2 by Foreign Minister TOGO. There was some opposition
 3 to paragraph four of the Allied reply, but KIDO was
 4 of the opinion that Japan's move should not be swayed
 5 by the opinions of individuals, but that they must abide
 6 by the interpretation of responsible authorities.¹⁰²⁴

7 The Japanese who were jealous of safeguarding the
 8 national polity and the military stiffened in attitude
 9 after the Allied reply was received. Difficulty was
 10 experienced in opening a meeting of the Supreme Council
 11 for Discussion of War.¹⁰²⁵ On August 12, 1945 KIDO
 12 decided to pass his nights in his office room without
 13 returning to his home, so that he could be of assistance
 14 to the Emperor.¹⁰²⁶ ANAMI contended that paragraph
 15 four of the Allied reply should not be accepted.¹⁰²⁷

16
 17 340. Although Prime Minister SUZUKI exerted
 18 extraordinary efforts, the meeting of the Supreme Council
 19 for the Direction of War was not held on August 13.¹⁰²⁸
 20 On the morning of August 14, 1945, because of handbills
 21 which were being dropped throughout the country, KIDO
 22 felt that indignation and confusion would result, and

23 1024. Aff. par. 308, T. 31,187

24 1025. Aff. par. 306, T. 31,186

1026. Diary, Aug. 12, 1945; Aff. par. 308, T. 31,187

25 1027. Aff. par. 309, T. 31,188

1028. Aff. par. 310, T. 31,189

the situation might get out of control. He submitted his
 1 views to the Emperor urging him to command the Government
 2 without further loss of time to go through the formalities
 3 for terminating the war.¹⁰²⁹ As the High Command did not
 4 approve of the convocation of the Supreme Council for the
 5 Direction of War, KIDO and Prime Minister SUZUKI advised
 6 the Emperor to invoke an Imperial Conference, which was
 7 done, and at 11 A.M. on August 14, 1945 it was finally
 8 decided to terminate the war.¹⁰³⁰ The Emperor had his
 9 message recorded on a phonograph disc.¹⁰³¹

10 341. KIDO was advised that the Imperial Guard
 11 Division was rebellious and that night they occupied and
 12 cut off the communication facilities of the Imperial
 13 Household Department.¹⁰³² His Majesty's library was
 14 surrounded. KIDO took refuge in the room of the Court
 15 physician, destroyed all his secret important documents,
 16 and later went to the underground vault room, together
 17 with ISHIWATA, Minister of the Imperial Household. The
 18 Imperial Household Department was completely isolated
 19 from the outside world. Later that morning the situation
 20 was controlled by General TANAKA, Seichi. During the
 21 night the revolutionaries had searched for KIDO at least
 22

23 1029. Aff. par. 311, T. 31,189-90

24 1030. Aff. par. 312, T. 31,191

25 1031. Diarv Aug. 14, 1945; Aff. paras. 313-314, T. 31,191-31,194.

1032. Aff. par. 315, T. 31,195

half a dozen times.¹⁰³³ They were also looking for the
 1 phonograph record, and at noon that day the Emperor
 2 broadcast the Imperial Rescript. That same morning
 3 KIDO's home was raided by gendarmes seeking to assassin-
 4 ate him.¹⁰³⁴ On the morning of August 16 the same group

5 went to the residence of Mr. WADA, where KIDO stayed
 6 occasionally, for the purpose of assassinating him. This
 7 group later committed suicide at the top of Atago Hill
 8 with hand grenades.¹⁰³⁵

9
 10 342. The prosecution argues that if it be true
 11 that KIDO advised the Emperor to summon the Supreme
 12 Council for Direction of War and command them to termin-
 13 ate the war, then the Emperor had such power and could
 14 have issued a similar command to prevent the initiation
 15 of war.

16 343. The assistance KIDO rendered to the Emperor
 17 at the time of the commencement of the Pacific War has
 18 been fully dealt with herein before.¹⁰³⁶ On June 18,
 19 1945 when KIDO made his suggestion to the Emperor, the
 20 War Minister and the Chiefs of Staff of the Army and
 21 Navy were expecting a desperate suicide battle on the
 22 mainland in which millions of lives would be lost on
 23

24 1033. Aff. par. 316, T. 31,196

25 1034. Diary, Aug. 15, 1945; Aff. paras. 315-318,
 T. 31,194-31,197

1035. Aff. par. 319, T. 31,201

1036. Infra. P. 144-230

both sides.¹⁰³⁷ Needless to say, in KIDO's suggestion
 1 it was contemplated that the matter would be fully dis-
 2 cussed in the conference which he requested His Majesty
 3 to call and at which the Emperor would express his desire
 4 for termination of the war. That is exactly what was
 5 done. As is shown in KIDO's Diary of June 22, 1945,¹⁰³⁸
 6 the Council was summoned and His Majesty "... communic-
 7 ated to them his desire regarding the conclusion of the
 8 war." As the diary further shows, the various officials
 9 expressed their views.
 10

11 344. On the early morning of August 10, 1945,
 12 as is shown in KIDO's Diary,¹⁰³⁹ at the Imperial Confer-
 13 ence at which His Majesty had expressed his desire for
 14 acceptance of the Allied reply, it was decided to accept
 15 the Potsdam Declaration on the sole condition of reaffirm-
 16 ation of the Emperor's sovereignty and the Imperial House.
 17 The Imperial decision is set forth in KIDO's Diary of
 18 that day. The Emperor instructed the Foreign Minister
 19 to go through the formalities of acceptance of the Potsdam
 20 Declaration. Pursuant thereto, Foreign Minister TOGO
 21 communicated to the United States of America, Great
 22 Britain, U.S.S.R., and China that Japan would accept
 23 the Potsdam Declaration on the understanding that any
 24

25 1037. Aff. par. 295, Tr. 31,157-31,158
 1038. Aff. par. 298, T. 31,162
 1039. Aff. par. 303, T. 31,178-31,179-31,180

1 demand for alteration of the Emperor's prerogative of
2 sovereignty was not included in the terms enumerated
3 in the declaration, hoping that the correctness of such
4 an understanding would be affirmed by the Allied Powers.¹⁰⁴⁰

5 345. The reply of Secretary of State Byrnes
6 was received on August 12, 1945. Paragraph I stated that
7 the Emperor's sovereignty would be placed under restric-
8 tion of the Supreme Commander for the Allied Powers
9 authorized to take measures deemed necessary for the
10 enforcement of the surrender terms.¹⁰⁴¹ At 11:00 A.M.
11 on that day the Foreign Minister had an audience with
12 the Emperor and submitted the contents of the reply to
13 him. The Emperor told TOGO that the reply from Secretary
14 of State Byrnes was acceptable and instructed him to
15 communicate with Premier SUZUKI to that effect, but two
16 or three cabinet ministers raised objections to the reply,
17 while the Premier himself was hesitant to accept the
18 Potsdam Declaration.¹⁰⁴²

19 346. On August 13, 1945 KIDO thought that
20 should Japan refuse to accept the Allied reply she would
21 do so without any valid reason and in consequence the
22 Allies would find it impossible to understand why Japan
23 had changed her attitude. The result would be that the
24

25 1040. T. 35,789
1041. Ex. 4, T. 109
1042. T. 35,609

Emperor would be subjected to criticism, not only from
1 the Allies but from the whole world. As KIDO stated,
2 he understood on that date His Majesty had taken his
3 decision with profound thought that there must be action
4 pursuant to Imperial decision.¹⁰⁴³

5 347. On August 14, 1945 when KIDO was received
6 in audience by the Emperor he urged the Emperor " . . .to
7 command the government without further loss of time to go
8 through the formalities for terminating the war."¹⁰⁴⁴ In
9 other words, this was merely carrying out the decision
10 which had been reached at the Imperial Conference of
11 August 10, 1945. It is to be noted that KIDO did not
12 advise the Emperor to stop the war by Imperial command.
13 He was urging that the Emperor lead the way to peace by
14 commanding the government to take the necessary steps so
15 that a cabinet would be convened according to Imperial
16 wishes, at which time the formalities of the termination
17 of the war would be decided.
18

19 348. In view of the fact that the High Command
20 did not approve of the convocation of the Supreme Council
21 for the Direction of War, KIDO had a conversation with
22 Premier SUZUKI in which he stressed the necessity of
23 petitioning the Emperor to convoke a joint Imperial
24

25 ^{1043.} T. 31,188

^{1044.} Aff. par. 311, T. 31,189-31,190

Emperor would be subjected to criticism, not only from
1 the Allies but from the whole world. As KIDO stated,
2 he understood on that date His Majesty had taken his
3 decision with profound thought that there must be action
4 pursuant to Imperial decision.¹⁰⁴³

5 347. On August 14, 1945 when KIDO was received
6 in audience by the Emperor he urged the Emperor " . . . to
7 command the government without further loss of time to go
8 through the formalities for terminating the war."¹⁰⁴⁴ In
9 other words, this was merely carrying out the decision
10 which had been reached at the Imperial Conference of
11 August 10, 1945. It is to be noted that KIDO did not
12 advise the Emperor to stop the war by Imperial command.
13 He was urging that the Emperor lead the way to peace by
14 commanding the government to ~~take~~ the necessary steps so
15 that a cabinet would be convened according to Imperial
16 wishes, at which time the formalities of the termination
17 of the war would be decided.
18

19 348. In view of the fact that the High Command
20 did not approve of the convocation of the Supreme Council
21 for the Direction of War, KIDO had a conversation with
22 Premier SUZUKI in which he stressed the necessity of
23 petitioning the Emperor to convoke a joint Imperial
24

25 ^{1043.} T. 31,188

^{1044.} Aff. par. 311, T. 31,189-31,190

Conference of the cabinet ministers and the Supreme
 1 Council for the Direction of War, and to command the
 2 termination of the war and the drafting of an Imperial
 3 Rescript terminating the war.¹⁰⁴⁵ Here again, at this
 4 meeting, the Emperor would express his desire of termin-
 5 ating the war and the decision would be left in the hands
 6 of the members of the Conference. The Conference of the
 7 Supreme Council for Direction of War and cabinet minist-
 8 ers was convened by the Emperor on August 14, 1945 at
 9 which the Premier explained Foreign Minister TOGO's
 10 opinion, which favored an acceptance of the declaration,
 11 and he also explained the opposition to it.¹⁰⁴⁶ The
 12 War Minister and the Chiefs of the General Staffs
 13 maintained the same position of opposition which they
 14 had taken the previous day.¹⁰⁴⁷ After considerable
 15 discussion, when it was found that there was no unanimity
 16 of opinion, the Premier asked the Emperor to give the
 17 decision.¹⁰⁴⁸ The Emperor expressed his decision in
 18 favor of the Potsdam Declaration and the government follow-
 19 ed His Majesty's opinion.¹⁰⁴⁹ As is shown, the Emperor
 20 did not command the government to stop the war before
 21 the question had been fully discussed at the meeting.
 22 The Emperor was asked by the government to choose one
 23 of the two points of view which were discussed at the
 24 of the two points of view which were discussed at the
 25

1045. Aff. par. 312. Tr. 31,190 1048. T. 35,789-

1046. Tr. 35,789 35,790

1047. Aff. par. 309, T. 31,188 1049. Ibid.

meeting. The Emperor was asked by the government to
1 choose one of the two points of view which were discussed
2 in the meeting.

3 349. In ordinary times, when a divergence of
4 views existed in the cabinet, a resignation en bloc
5 would follow, but this, however, is the only one except-
6 ional case in the whole constitutional history of Japan,
7 that the cabinet could not reach its decision and asked
8 the Emperor to decide the policy on behalf of the govern-
9 ment. Time was of the essence. It was an extremely
10 critical situation. Lives would have been lost in a
11 delay which a cabinet change would have entailed. The
12 Japanese nation was in a high state of excitement due
13 to the atom bombs and the threatened invasions, but true
14 to constitutional traditions, the Emperor issued no
15 command to stop the war.
16

17 B.

18 CONVENTIONAL WAR CRIMES AND CRIMES
19 AGAINST HUMANITY.
20

21 350. We know of no facts in this case, or law
22 which points to any responsibility on the part of KIDO
23 for Conventional War Crimes and Crimes Against Humanity.
24 There is no evidence that he ordered, caused, or permitted
25 the commission of any of these crimes alleged in the

Indictment. As Education of Welfare Minister in the
 1 First KONOYE Cabinet and as Home Minister in the
 2 HIRANUMA Cabinet there is no proof that he had any
 3 responsibility or committed any act concerning any
 4 atrocities or that he was the formulator of any policy
 5 instigating the commission of any such act. These were
 6 purely military matters, over which he had no jurisdic-
 7 tion or control. KIDO was a civilian, not a military man.
 8 Even if he had knowledge of past atrocities, that is no
 9 evidence that he participated in the commission of them,
 10 that he authorized their continuance, or that he was in
 11 a position to prevent them from occurring in the future.

13 351. As Lord Keeper of the Privy Seal it has
 14 been definitely established that KIDO advised against the
 15 Pacific War. He was not a member of the government nor
 16 of the military. The evidence on this point shows he
 17 had no responsibility or control.¹⁰⁵⁰ As shown in his
 18 diary of March 13, 1942,¹⁰⁵¹ he had a talk with Imperial
 19 Household Minister MATSUUDAIRA about the speech delivered
 20 by Great Britain's Foreign Minister Eden, referring to
 21 the atrocities at Hong Kong. KIDO testified that he
 22 reported this to the Emperor and as a result the Emperor
 23 consulted TOJO.¹⁰⁵² TOJO examined into the matter and
 24

25 1050. Infra. P. 116-130

1051. Ex. 1985, T. 14,606

1052. Aff. par. 251, Tr. 31,059 - 31,060

received a report that there were no such instances as

set forth in the speech and that the treatment of
 1 prisoners was just and fair. The evidence is that
 2 Mr. Eden made a subsequent radio broadcast saying that
 3 the situation in Hong Kong had improved.¹⁰⁵³ Neither
 4 KIDO nor TOJO were cross-examined by the prosecution on
 5 this matter. There is no basis for any contention
 6 that KIDO's testimony and his belief should be rejected.
 7 There is no evidence that he had any reason not to
 8 believe TOJO. Similarly there is no ground for any
 9 claim that KIDO's testimony regarding the American air
 10 men should be rejected.¹⁰⁵⁴ KIDO's testimony with
 11 regard to the American fliers is unimpeached and sub-
 12 stantiated by other evidence in the case.¹⁰⁵⁵ There is
 13 no evidence refuting KIDO's conversations that he had
 14 with SHIGEMITSU regarding Swiss protests. Contrary
 15 to the prosecution's contention that KIDO never reported
 16 to the Emperor or advised him with respect to outrages
 17 "which were occurring within a few miles of his office
 18 as well as in every theater of war", the prosecution's
 19 own exhibit¹⁰⁵⁶ shows that he did report to the Emperor,

- 21 1053. Tr. 35,771, 35,772
 22 1054. Par. JJ-84, Tr. 41,123
 23 1055. Aff. par. 254, Tr. 31,062; Aff. par. 258,
 24 Tr. 31,067
 25 1056. Ex. 1987, Tr. 14,608

1 when requested to do so by Premier TOJO, regarding the
2 disposition of the Doolittle fliers. At that time TOJO
3 told him that he was advised of their punishment, which
4 was going to be inflicted; that is, death, but that TOJO
5 caused the penalty for most of them to be reduced
6 according to his Majesty's benevolence. As is also
7 shown by the diary, he reported this to the Emperor,
8 pending a report by the Chief of Staff. The Chief of
9 Staff was the sole responsible authority.¹⁰⁵⁷ We know
10 of no law holding knowledge in and of itself is a crime.
11
12
13
14
15
16
17
18
19
20
21
22

23 1056. Ex. 1987, Tr. 14,608.
24 1057. Aff. par. 258, T. 21,067
25

352. Although the prosecution knows that
1 KIDO had no responsibility for any atrocities, it
2 grasps at straws and drags this matter into his
3 summation in a desperate attempt to convict him of
4 something. It even went so far as to try to prove
5 as late as November 4, 1947 that he was the head of
6 the Kempei Tai.¹⁰⁵⁸ The prosecution cites no legally
7 acceptable evidence whatsoever, nor does it point to
8 any law, rule or regulation which could in any stretch
9 of the imagination indicate that KIDO was responsible
10 for any Conventional War Crimes or Crimes Against
11 Humanity. The evidence is that it was not even his
12 responsibility to report such matters to the Emperor;¹⁰⁵⁹
13 that it was the duty and responsibility of the High
14 Command;¹⁰⁶⁰ and that the prosecution well knows this
15 can be readily seen from its general summation. We
16 submit that not only has the prosecution failed to
17 establish KIDO's guilt, but the evidence shows his
18 innocence.
19

20 C.

21 MITIGATION

22
23 353. The Tribunal ruled that evidence in
24 mitigation should be offered upon the completion of

25 1058. Tr. 32,415
1059. Tr. 36,511
1060. Ibid.

1 all evidence and before summation. We are firmly
2 convinced of KIDO's innocence. In view of the Tri-
3 bunal's ruling we were forced to make a decision
4 either to offer evidence in mitigation or forever
5 lose that valuable right. Upon the assurance of
6 the Tribunal that there would be no implication of
7 guilt where such mitigation evidence is offered be-
8 fore a verdict, the testimony of various witnesses
9 was offered on behalf of KIDO.¹⁰⁶¹ Although the great-
10 est latitude is permitted in the United States and
11 British countries in permitting an accused or his
12 counsel to present mitigating circumstances on be-
13 half of an accused after he is convicted and before
14 sentence,¹⁰⁶² the prosecution here adopted a harsh,
15 unprecedented and almost cruel policy in objecting
16 to evidence offered in mitigation. KIDO's evidence
17 in chief shows that he consistently opposed the
18 commencement of the Pacific War and immediately
19 after its commencement he devoted efforts to bring
20 about its early termination. Notwithstanding this,
21 the prosecution now claims that his efforts for peace
22 did not begin until after the war situation began to
23 develop in a way unfavorable to Japan. We offered
24
25

1061. Tr. 38,915, 38,916
1062. Tr. 38,923

in evidence the affidavit of YAMAZAKI, Iwao¹⁰⁶³ to
 1 show that one month after he became Lord Keeper of
 2 the Privy Seal on June 1, 1940 KIDO stayed in office
 3 carrying on his work against the militarists, not-
 4 withstanding the threats made on his life.¹⁰⁶⁴ It
 5 took courage to accept the position of Lord Keeper
 6 of the Privy Seal, with the past history of assassin-
 7 ations, bombings, and murder surrounding that office
 8 even to the extent of the cold blooded assassination
 9 of the Lord Keeper himself.¹⁰⁶⁵ The prosecution ob-
 10 jected to YAMAZAKI's affidavit on the ground that
 11 it was a statement of a policy officer who arrested
 12 a number of persons in 1940 who were charged with a
 13 plot to murder certain people including KIDO.¹⁰⁶⁶ The
 14 objection was sustained.¹⁰⁶⁷

16 354. Defense document 3074, affidavit of
 17 YONAI, Mitsumasa was offered in evidence¹⁰⁶⁸ for the
 18 purpose of showing that KIDO, "shortly after war
 19 commenced was already talking about offers to be
 20 made to restore peace, at a time when the Japanese
 21 were riding high on the waves of victory; that it
 22 was not possible at that time to talk openly about
 23

- 24 1063. Tr. 38,916
 1064. Tr. 38,918
 1065. Infra par. 59, p. 49
 1066. Tr. 38,918
 1067. Tr. 38,919

1 restoration of peace, and this evidence shows that
 2 he was discussing it and considering ways and means
 3 of presenting it about at the earliest possible
 4 moment. It also shows that later on, when there was
 5 a plan proposed, proposing a method of continuing the
 6 war, that KIDO was diametrically opposed to it and
 7 still continued to do what he thought was right for
 8 peace.¹⁰⁶⁹ The prosecution offered technical ob-
 9 jections to the first part of the affidavit and ob-
 10 jected to the balance saying, "the rest of it deals
 11 with peace offers after the outbreak of war, as to
 12 which there is also a great deal of evidence in
 13 existence already."¹⁰⁷⁰ The objection was sustained.¹⁰⁷¹
 14 Compare this with the prosecution's claim now, that
 15 these efforts did not commence until after the war
 16 became unfavorable to Japan.¹⁰⁷²

17 355. In mitigation, Admiral OKADA Keisake
 18 testified in substance,¹⁰⁷³ over objection by the
 19 prosecution that before the end of the TOJO Cabinet
 20 in July 1944 he spoke with Baron WAKATSUKI, Prince
 21 KONOYE, Baron HIRANUMA and Marquis KIDO who approved
 22 of his idea that it was necessary to have one, who
 23

24 1069. Tr. 38,920

1070. Tr. 38,919-20

1071. Tr. 38,921

1072. Far. JJ-85, Tr. 41,124

1073. Ex. 3912, Tr. 38,925-6

restoration of peace, and this evidence shows that
 1 he was discussing it and considering ways and means
 2 of presenting it about at the earliest possible
 3 moment. It also shows that later on, when there was
 4 a plan proposed, proposing a method of continuing the
 5 war, that KIDO was diametrically opposed to it and
 6 still continued to do what he thought was right for
 7 peace.¹⁰⁶⁹ The prosecution offered technical ob-
 8 jections to the first part of the affidavit and ob-
 9 jected to the balance saying, "the rest of it deals
 10 with peace offers after the outbreak of war, as to
 11 which there is also a great deal of evidence in
 12 existence already."¹⁰⁷⁰ The objection was sustained.¹⁰⁷¹
 13 Compare this with the prosecution's claim now, that
 14 these efforts did not commence until after the war
 15 became unfavorable to Japan.¹⁰⁷²

355. In mitigation, Admiral OKADA Keisake
 17 testified in substance,¹⁰⁷³ over objection by the
 18 prosecution that before the end of the TOJO Cabinet
 19 in July 1944 he spoke with Baron WAKATSUKI, Prince
 20 KONOYE, Baron HIRANUMA and Marquis KIDO who approved
 21 of his idea that it was necessary to have one, who
 22

- 23
 24 1069. Tr. 38,920
 25 1070. Tr. 38,919-20
 1071. Tr. 38,921
 1072. Far. JJ-85, Tr. 41,124
 1073. Ex. 3912, Tr. 38,925-6

1 would identify himself with the restoration of peace
2 by the termination of hostilities, join the Cabinet
3 as a Minister of State. Efforts were made to have
4 Admiral YONAI reinstated and appointed Navy Minister
5 but in vain. Success, however, was obtained in hav-
6 ing Admiral YONAI join the KOISO Cabinet as Minister
7 of the Navy when it was formed after the TOJO
8 Cabinet fell in July, 1944. He further testified that
9 in April, 1944 he and KIDO had an extremely confiden-
10 tial talk about termination of the war. The very
11 nature of this subject required extreme caution on
12 his part. The ideas of KIDO and OKADA coincided in
13 that efforts should be made to end hostilities as
14 quickly as possible, but it was not a matter which
15 could be forced. He had previously discussed this
16 matter with MATSUDAIRA and asked him to transmit his
17 ideas to KIDO after which he and KIDO had many talks.
18 OKADA in the last paragraph of his affidavit extended
19 his congratulations to KIDO "for the success of his
20 heroic efforts."

21 356. The affidavit of HIROSE, Histada over
22 objection of the prosecution was permitted in evi-
23 dence.¹⁰⁷⁴ He testified that he was Minister of State
24 without portfolio for a short period of time in the
25 1074. Ex. 3913, Tr. 38,927-9

1 KOISO Cabinet and commencing in August 1945 he was
2 Mayor of Tokyo and had known KIDO intimately since
3 1938. He stated KIDO had been watching for a long
4 time for a chance to conclude the war and made
5 great efforts towards that end; the circumstances
6 under which KIDO endeavored to have Admiral YONAI
7 appointed Vice Prime Minister of the KOISO Cabinet
8 in July 1944; his efforts to have Admiral SUZUKI
9 appointed in April, 1945 to realize peace and KIDO's
10 cooperation with YONAI, the chief pacifist of the
11 SUZUKI Cabinet. HIROSE arranged meetings between
12 YONAI and KIDO concerning the peace problems. He
13 testified that upon the conclusion of the war Navy
14 Minister YONAI said, "after all, Marquis KIDO is
15 more responsible than any other for the conclusion
16 of the war."¹⁰⁷⁵

17 357. Over objection by the prosecution the
18 testimony of HOSOKAWA, Morisada was read to the
19 Tribunal.¹⁰⁷⁶ This witness was Prince KONOYE's son-
20 in-law and acted at one time as KONOYE's secretary.
21 He related a conversation he had with Prince KONOYE
22 wherein the latter stated, "Marquis KIDO's efforts
23 for terminating the war have been indeed magnificent."¹⁰⁷⁷

24 1075. Tr. 38,929
25 1076. Ex. 3914, Tr. 38,930-1
1077. Tr. 38,930

1 358. ISHIWATA, Sotoro testified over the
2 prosecution's objection that he was Imperial House-
3 hold Minister from June 4, 1945 to January 16, 1946.¹⁰⁷⁸
4 When he assumed the position KIDO emphasized to him
5 the necessity of grasping the earliest possible
6 chance for peace negotiations. He saw KIDO at least
7 two or three times a week while he was in office
8 and stated that KIDO "bravely, patiently and pain-
9 fully fought oppositions until the war was finally
10 terminated on August 15. He was one of the people
11 who contributed most to the quick realization of the
12 capitulation."¹⁰⁷⁹

13 Sometime about July 20, 1945 he had a con-
14 versation with KIDO in which KIDO expressed the hope
15 that he might be spared until the war had been
16 brought to a close, as there was a possibility of
17 violence, such as an assassination of him by the
18 Army. He discussed with him Baron SHIDEHARA as a
19 possible successor as Lord Keeper of the Privy Seal
20 in case he should be killed. ISHIWATA and KIDO had
21 a conversation about the beginning of August regard-
22 ing a request to the Emperor to broadcast as they
23 thought it was the best way to prevent internal
24

25 1078. Ex. 3915, Tr. 38,931-3
1079. Tr. 38,932-3

1 confusion. On August 11, 1945 KIDO told ISHIWATA
2 that he had spoken to the Emperor about it and ISHI-
3 WATA gave his approval to the plan. When advised by
4 KIDO that the Emperor was ready to broadcast ISHI-
5 WATA made the necessary preparations. He further
6 testified that on August 14, 1945 a unit of the
7 Imperial Guards Division seized the Imperial House-
8 hold Ministry Building. They scattered handbills --
9 one of which had an item condemning KIDO. The in-
10 surgent army was looking for both KIDO and ISHIWATA
11 to kill them and they hid in the vault that night.
12 Although the prosecution tried to prevent the fore-
13 going testimony coming to light, it did not cross-
14 examine any of the witnesses.

15 359. The affidavit of MACHIMURA, Kingo was 1080
16 offered in evidence in mitigation but objected to
17 by the prosecution on the ground that it was a six-
18 page affidavit describing how certain people searched
19 for KIDO and tried to assassinate him on the 16th
20 of August, 1945, and how they did not find him and
21 the police ultimately besieged them in a park and
22 ultimately captured them or killed them. The
23 prosecution stated, "KIDO has already stated the
24 fact of his attempted assassination in his affidavit
25 1080. Def. Doc. 3049, Tr. 38,935

1081
 which is not disputed . . . " It was pointed out
 1 that the affidavit showed that the people who tried
 2 to kill KIDO were connected with the military. The
 1082
 3 objection was sustained.

4 360. Should this Tribunal, despite the
 5 overwhelming evidence which we submit conclusively
 6 establishes KIDO's innocence, reach a contrary
 7 verdict, KIDO's successful efforts in saving hund-
 8 reds of thousands of lives, at the risk of his own,
 9 should make one pause and consider whether the
 10 confinement and humiliation already suffered by
 11 him has been unjust.

13 361. In an extremely startling statement
 14 "KIDO's alleged peace efforts" are belittled as "of
 1083
 15 minor importance." The undisputed facts in evi-
 16 dence, the evidence offered in mitigation and the
 17 prosecution's own prior statement regarding peace
 18 offers "as to which there is also a great deal of
 1084
 19 evidence in existence already" and its deliberate
 20 appraisal. "No doubt, if his advice had been taken, we
 21 would not be holding this trial today . . ." must be
 22 entirely disregarded to accept such a view. Is one
 23 who strives for peace and is instrumental in its
 24

1081. Tr. 38,936 1084. Tr. 38,920
 1082. Tr. Ibid 1085. Pros. Doc. 0003, Tr. 16,852
 1083. Par. JJ-85, Tr. 41,124

effectation to be ridiculed and condemned? Are the
1 efforts of anyone who brings about peace even one day
2 sooner with the attendant saving of human lives to
3 be characterized as "of minor importance"? ¹⁰⁸⁶ Would
4 anyone have preferred that the Allied Powers invaded
5 Japan -- to borrow the thought of that great English
6 statesman, Winston Churchill in referring to a differ-
7 ent occasion -- whatever the cost might have been,
8 fighting on the beaches, on the landing grounds, in
9 the fields, in the streets and in the hills? By
10 preventing this, KIDO's efforts, at the risk of his
11 own life, saved hundreds of thousands of lives.
12 Surely one must be willing to abandon all standards
13 of right and wrong in a frenzied effort to convict
14 in characterizing KIDO's peace efforts as "of minor
15 importance." Such a position is neither comparable
16 to, nor in keeping with, the opening address of Mr.
17 Justice Jackson, Chief of Counsel for the United
18 States before the Tribunal at Nuernberg November 21,
19 1945:
20

21 "That four great nations, flushed with
22 victory and stung with injury stay the hand of ven-
23 geance and voluntarily submit their captive enemies
24 to the judgment of the law is one of the most
25 1086. Tr. 38,920

significant tributes that Power ever has paid to Reason."

D.

CONCLUSION

362. In respectfully requesting an acquittal of the accused KIDO, we adopt and ask the Tribunal to consider the law as presented by the defense throughout the trial and in general summation as being decisive, and that on the law and on the facts presented we urge such a verdict would be overwhelmingly substantiated.

363. In conclusion, with the Tribunal's permission, I would feel remiss in my duties as an attorney in failing to add a few personal remarks. It has been with keen appreciation of the opportunity of assisting in the dispensation of justice on an international level which has guided my meager efforts before this Tribunal. Perhaps the high virtue of justice has been transcended in importance by these proceedings leading the way to a high level of international morality essential for the creation of a society of nations. One may listen to a thousand and one trite arguments on democracy, but in my humble submission, the mere fact we are here urging the cause of our erstwhile opponents represents a

living democracy.

1 THE PRESIDENT: We will adjourn until
2 half-past nine Wednesday morning.

3 (Whereupon, at 1600, an adjourn-
4 ment was taken until Wednesday, 7 April,
5 1948 at 0930.)
6
7 ---
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25